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In the Supreme Court of the United States

OCTOBER TERM, 1936

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, AND WILLIAM M. WELCH, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MASSACHUSETTS, AND THE EDISON ELECTRIC ILLUMINATING COMPANY OF BOSTON, ET AL., PETITIONERS

v.

GEORGE P. DAVIS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

APPENDIX TO BRIEF FOR PETITIONERS HELVERING AND WELCH

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APPENDIX A

THE SOCIAL SECURITY ACT (ACT OF AUGUST 14, 1935, c. 531, 49 STAT. 620, U. S. C., SUPP. II, TITLE 42, C. 7)

[H. R. 7260]

AN ACT To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

APPROPRIATION

SECTION 1. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to aged needy individuals, there is hereby authorized to be appropriated for the fiscal year ended June 30, 1936, the sum of $49,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by

the Social Security Board established by Title VII (hereinafter referred to as the "Board"), State plans for old-age assistance.

STATE OLD-AGE ASSISTANCE PLANS

SEC. 2. (a) A State plan for old-age assistance must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that, if the State or any of its political subdivisions collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under the plan, one-half of the net amount so collected shall be promptly paid to the United States. Any pay-

ment so made shall be deposited in the Treasury to the credit of the appropriation for the purposes of this title.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for old-age assistance under the plan—

(1) An age requirement of more than sixty-five years, except that the plan may impose, effective until January 1, 1940, an age requirement of as much as seventy years; or

(2) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application; or

(3) Any citizenship requirement which excludes any citizen of the United States.

PAYMENT TO STATES

SEC. 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing July 1, 1935, (1) an amount, which shall be used exclusively as old-age assistance, equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan with respect to each individual who at the time of such expenditure is sixty-five years of age or older and is not an in-

mate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and (2) 5 per centum of such amount, which shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose: *Provided,* That the State plan, in order to be approved by the Board, need not provide for financial participation before July 1, 1937, by the State, in the case of any State which the Board, upon application by the State and after reasonable notice and opportunity for hearing to the State, finds is prevented by its constitution from providing such financial participation.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

OPERATION OF STATE PLANS

SEC. 4. In the case of any State plan for old-age assistance which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 5. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 6. When used in this title the term "old-age assistance" means money payments to aged individuals.

TITLE II—FEDERAL OLD-AGE BENEFITS

OLD-AGE RESERVE ACCOUNT

SECTION 201. (a) There is hereby created an account in the Treasury of the United States to be known as the "Old-Age Reserve Account" hereinafter in this title called the "Account." There is hereby authorized to be appropriated to the Account for each fiscal year, beginning with the fiscal year ending June 30, 1937, an amount sufficient as an annual premium to provide for the payments

required under this title, such amount to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually. The Secretary of the Treasury shall submit annually to the Bureau of the Budget an estimate of the appropriations to be made to the Account.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts credited to the Account as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Account. Such special obligations shall bear interest at the rate of 3 per centum per annum. Obligations other than such special obligations may be acquired for the Account only on such terms as to provide an investment yield of not less than 3 per centum per annum.

(c) Any obligations acquired by the Account (except special obligations issued exclusively to the Account) may be sold at the market price, and

such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Account shall be credited to and form a part of the Account.

(e) All amounts credited to the Account shall be available for making payments required under this title.

(f) The Secretary of the Treasury shall include in his annual report the actuarial status of the Account.

OLD-AGE BENEFIT PAYMENTS

SEC. 202. (a) Every qualified individual (as defined in section 210) shall be entitled to receive, with respect to the period beginning on the date he attains the age of sixty-five, or on January 1, 1942, whichever is the later, and ending on the date of his death, an old-age benefit (payable as nearly as practicable in equal monthly installments) as follows:

(1) If the total wages (as defined in section 210) determined by the Board to have been paid to him, with respect to employment (as defined in section 210) after December 31, 1936, and before he attained the age of sixty-five, were not more than $3,000, the old-age benefit shall be at a monthly rate of one-half of 1 per centum of such total wages;

(2) If such total wages were more than $3,000, the old-age benefit shall be at a monthly rate equal to the sum of the following:

(A) One-half of 1 per centum of $3,000; plus

(B) One-twelfth of 1 per centum of the amount by which such total wages exceeded $3,000 and did not exceed $45,000; plus

(C) One-twenty-fourth of 1 per centum of the amount by which such total wages exceeded $45,000.

(b) In no case shall the monthly rate computed under subsection (a) exceed $85.

(c) If the Board finds at any time that more or less than the correct amount has theretofore been paid to any individual under this section, then, under regulations made by the Board, proper adjustments shall be made in connection with subsequent payments under this section to the same individual.

(d) Whenever the Board finds that any qualified individual has received wages with respect to regular employment after he attained the age of sixty-five, the old-age benefit payable to such individual shall be reduced, for each calendar month in any part of which such regular employment occurred, by an amount equal to one month's benefit. Such reduction shall be made, under regulations prescribed by the Board, by deductions from one or more payments of old-age benefit to such individual.

PAYMENTS UPON DEATH

SEC. 203. (a) If any individual dies before attaining the age of sixty-five, there shall be paid to his estate an amount equal to 3½ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936.

(b) If the Board finds that the correct amount of the old-age benefit payable to a qualified individual during his life under section 202 was less than 3½ per centum of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which such 3½ per centum exceeds the amount (whether more or less than the correct amount) paid to him during his life as old-age benefit.

(c) If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was less than the correct amount to which he was entitled under section 202, and that the correct amount of such old-age benefit was 3½ per centum or more of the total wages by which such old-age benefit was measurable, then there shall be paid to his estate a sum equal to the amount, if any, by which the correct amount of the old-age benefit exceeds the amount which was so paid to him during his life.

PAYMENTS TO AGED INDIVIDUALS NOT QUALIFIED FOR BENEFITS

SEC. 204. (a) There shall be paid in a lump sum to any individual who, upon attaining the age of sixty-five, is not a qualified individual, an amount equal to 3½ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after December 31, 1936, and before he attained the age of sixty-five.

(b) After any individual becomes entitled to any payment under subsection (a), no other payment shall be made under this title in any manner measured by wages paid to him, except that any part

of any payment under subsection (a) which is not paid to him before his death shall be paid to his estate.

AMOUNTS OF $500 OR LESS PAYABLE TO ESTATES

SEC. 205. If any amount payable to an estate under section 203 or 204 is $500 or less, such amount may, under regulations prescribed by the Board, be paid to the persons found by the Board to be entitled thereto under the law of the State in which the deceased was domiciled, without the necessity of compliance with the requirements of law with respect to the administration of such estate.

OVERPAYMENTS DURING LIFE

SEC. 206. If the Board finds that the total amount paid to a qualified individual under an old-age benefit during his life was more than the correct amount to which he was entitled under section 202, and was 3½ per centum or more of the total wages by which such old-age benefit was measurable, then upon his death there shall be repaid to the United States by his estate the amount, if any, by which such total amount paid to him during his life exceeds whichever of the following is the greater: (1) Such 3½ per centum, or (2) the correct amount to which he was entitled under section 202.

METHOD OF MAKING PAYMENTS

SEC. 207. The Board shall from time to time certify to the Secretary of the Treasury the name and address of each person entitled to receive a payment under this title, the amount of such pay-

ment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursement of the Treasury Department,and prior to audit or settlement by the General Acounting Office, shall make payment in acordance with the certification by the Board.

ASSIGNMENT

SEC. 208. The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

PENALTIES

SEC. 209. Whoever in any application for any payment under this title makes any false statement as to any material fact, knowing such statement to be false, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

DEFINITIONS

SEC. 210. When used in this title—

(a) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such

employer with respect to employment during such calendar year.

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(c) The term "qualified individual" means any individual with respect to whom it appears to the satisfaction of the Board that—

(1) He is at least sixty-five years of age; and

(2) The total amount of wages paid to him, with respect to employment after December

31, 1936, and before he attained the age of sixty-five, was not less than $2,000; and

(3) Wages were paid to him, with respect to employment on some five days after December 31, 1936, and before he attained the age of sixty-five, each day being in a different calendar year.

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

APPROPRIATION

SECTION 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

PAYMENTS TO STATES

SEC. 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not cer-

tify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

PROVISIONS OF STATE LAWS

SEC. 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemploy-

ment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

TITLE IV—GRANTS TO STATES FOR AID TO DEPENDENT CHILDREN

APPROPRIATION

SECTION 401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy dependent children, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $24,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Board, State plans for aid to dependent children.

STATE PLANS FOR AID TO DEPENDENT CHILDREN

SEC. 402. (a) A State plan for aid to dependent children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or

designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within the State within one year immediately preceding the application, if its mother has resided in the State for one year immediately preceding the birth.

PAYMENT TO STATES

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount,

which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds $18, or if there is more than one dependent child in the same home, as exceeds $18 for any month with respect to one such dependent child and $12 for such month with respect to each of the other dependent children.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than two-thirds of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it

finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified.

OPERATION OF STATE PLANS

SEC. 404. In the case of any State plan for aid to dependent children which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 405. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $250,000 for all necessary expenses of the Board in administering the provisions of this title.

DEFINITIONS

SEC. 406. When used in this title—

(a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home;

(b) The term "aid to dependent children" means money payments with respect to a dependent child or dependent children.

TITLE V—GRANTS TO STATES FOR MATERNAL AND CHILD WELFARE

PART 1—MATERNAL AND CHILD HEALTH SERVICES

APPROPRIATION

SECTION 501. For the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $3,800,000. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services.

ALLOTMENTS TO STATES

SEC. 502. (a) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and such part of $1,800,000 as he finds that the number of live births in such State bore to the total number of live births in the United States, in the latest calendar year for which the Bureau of the Census has available statistics.

(b) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to the States $980,000 (in addition to the allotments made under subsection (a)), according to the financial need of each State for assistance in carrying out its State plan, as deter-

mined by him after taking into consideration the number of live births in such State.

(c) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 504 until the end of the second succeeding fiscal year. No payment to a State under section 504 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

APPROVAL OF STATE PLANS

SEC. 503. (a) A State plan for maternal and child-health services must (1) provide for financial participation by the State; (2) provide for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; (3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan; (4) provide that the State health agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for the extension and improvement of local maternal and child-health services administered by local child-health units; (6) provide for cooperation with medical, nursing, and welfare groups and organizations; and (7) provide for the development of

demonstration services in needy areas and among groups in special need.

(b) The Chief of the Children's Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State health agency of his approval.

PAYMENT TO STATES

SEC. 504. (a) From the sums appropriated therefor and the allotments available under section 502 (a), the Secretary of the Treasury shall pay to each State which has an approved plan for maternal and child-health services, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Labor shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures,

the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.

(2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Labor for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

(c) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States from the allotments available under section 502 (b), and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

OPERATION OF STATE PLANS

SEC. 505. In the case of any State plan for maternal and child-health services which has been approved by the Chief of the Children's Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 503 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

PART 2—SERVICES FOR CRIPPLED CHILDREN

APPROPRIATION

SEC. 511. For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State, services for locating crippled children, and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are crippled or who are suffering from conditions which lead to crippling, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,850,000. The sums made available

under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services.

ALLOTMENTS TO STATES

SEC. 512. (a) Out of the sums appropriated pursuant to section 511 for each fiscal year the Secretary of Labor shall allot to each State $20,000, and the remainder to the States according to the need of each State as determined by him after taking into consideration the number of crippled children in such State in need of the services referred to in section 511 and the cost of furnishing such services to them.

(b) The amount of any allotment to a State under subsection (a) for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under section 514 until the end of the second succeeding fiscal year. No payment to a State under section 514 shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

APPROVAL OF STATE PLANS

SEC. 513. (a) A State plan for services for crippled children must (1) provide for financial participation by the State; (2) provide for the administration of the plan by a State agency or the supervision of the administration of the plan by a State agency; (3) provide such methods of administration (other than those relating to selection,

tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan; (4) provide that the State agency will make such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for carrying out the purposes specified in section 511; and (6) provide for cooperation with medical, health, nursing, and welfare groups and organizations and with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children.

(b) The Chief of the Children's Bureau shall approve any plan which fulfills the conditions specified in subsection (a) and shall thereupon notify the Secretary of Labor and the State agency of his approval.

PAYMENT TO STATES

SEC. 514. (a) From the sums appropriated therefor and the allotments available under section 512, the Secretary of the Treasury shall pay to each State which has an approved plan for services for crippled children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Labor shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such investigation as he may find necessary.

(2) The Secretary of Labor shall then certify the amount so estimated by him to the Secretary of the Treasury, reduced or increased, as the case may be, by any sum by which the Secretary of Labor finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Labor for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Labor, the amount so certified.

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OPERATION OF STATE PLANS

SEC. 515. In the case of any State plan for services for crippled children which has been approved by the Chief of the Children's Bureau, if the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds that in the administration of the plan there is a failure to comply substantially with any provision required by section 513 to be included in the plan, he shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State.

PART 3—CHILD-WELFARE SERVICES

SEC. 521. (a) For the purpose of enabling the United States, through the Children's Bureau, to cooperate with State public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public-welfare services (hereinafter in this section referred to as "child-welfare services") for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, there is hereby authorized to be appropriated for each fiscal year, begininng with the fiscal year ending June 30, 1936, the sum of $1,500,000. Such amount shall be allotted by the Secretary of Labor for use by cooperating State public-welfare agencies on the basis of plans developed jointly by the State agency and the Children's Bureau, to

each State, $10,000, and the remainder to each State on the basis of such plans, not to exceed such part of the remainder as the rural population of such State bears to the total rural population of the United States. The amount so allotted shall be expended for payment of part of the cost of district, county or other local child-welfare services in areas predominantly rural, and for developing State services for the encouragement and assistance of adequate methods of community child-welfare organization in areas predominantly rural and other areas of special need. The amount of any allotment to a State under this section for any fiscal year remaining unpaid to such State at the end of such fiscal year shall be available for payment to such State under this section until the end of the second succeeding fiscal year. No payment to a State under this section shall be made out of its allotment for any fiscal year until its allotment for the preceding fiscal year has been exhausted or has ceased to be available.

(b) From the sums appropriated therefor and the allotments available under subsection (a) the Secretary of Labor shall from time to time certify to the Secretary of the Treasury the amounts to be paid to the States, and the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, make payments of such amounts from such allotments at the time or times specified by the Secretary of Labor.

PART 4—VOCATIONAL REHABILITATION

SEC. 531. (a) In order to enable the United States to cooperate with the States and Hawaii in extending and strengthening their programs of vocational rehabilitation of the physically disabled, and to continue to carry out the provisions and purposes of the Act entitled "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment", approved June 2, 1920, as amended (U. S. C., title 29, ch. 4; U. S. C., Supp. VII, title 29, secs. 31, 32, 34, 35, 37, 39, and 40), there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $841,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $1,938,000. Of the sums appropriated pursuant to such authorization for each fiscal year, $5,000 shall be apportioned to the Territory of Hawaii and the remainder shall be apportioned among the several States in the manner provided in such Act of June 2, 1920, as amended.

(b) For the administration of such Act of June 2, 1920, as amended, by the Federal agency authorized to administer it, there is hereby authorized to be appropriated for the fiscal years ending June 30, 1936, and June 30, 1937, the sum of $22,000 for each such fiscal year in addition to the amount of the existing authorization, and for each fiscal year thereafter the sum of $102,000.

PART 5—ADMINISTRATION

SEC. 541. (a) There is hereby authorized to be appropriated for the fiscal year ending June 30,

1936, the sum of $425,000, for all necessary expenses of the Children's Bureau in administering the provisions of this title, except section 531.

(b) The Children's Bureau shall make such studies and investigations as will promote the efficient administration of this title, except section 531.

(c) The Secretary of Labor shall include in his annual report to Congress a full account of the administration of this title, except section 531.

TITLE VI—PUBLIC HEALTH WORK

APPROPRIATION

SECTION 601. For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $8,000,000 to be used as hereinafter provided.

STATE AND LOCAL PUBLIC HEALTH SERVICES

SEC. 602. (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall

be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States. Upon making such allotments the Surgeon General of the Public Health Service shall certify the amounts thereof to the Secretary of the Treasury.

(b) The amount of an allotment to any State under subsection (a) for any fiscal year, remaining unpaid at the end of such fiscal year, shall be available for allotment to States under subsection (a) for the succeeding fiscal year, in addition to the amount appropriated for such year.

(c) Prior to the beginning of each quarter of the fiscal year, the Surgeon General of the Public Health Service shall, with the approval of the Secretary of the Treasury, determine in accordance with rules and regulations previously prescribed by such Surgeon General after consultation with a conference of the State and Territorial health authorities, the amount to be paid to each State for such quarter from the allotment to such State, and shall certify the amount so determined to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay in accordance with such certification.

(d) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in section 601, and in accordance with plans presented by the health authority of such State and approved by the Surgeon General of the Public Health Service.

INVESTIGATIONS

SEC. 603. (a) There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,000,000 for expenditure by the Public Health Service for investigation of disease and problems of sanitation (including the printing and binding of the findings of such investigations), and for the pay and allowances and traveling expenses of personnel of the Public Health Service, including commissioned officers, engaged in such investigations or detailed to cooperate with the health authorities of any State in carrying out the purposes specified in section 601: *Provided,* That no personnel of the Public Health Service shall be detailed to cooperate with the health authorities of any State except at the request of the proper authorities of such State.

(b) The personnel of the Public Health Service paid from any appropriation not made pursuant to subsection (a) may be detailed to assist in carrying out the purposes of this title. The appropriation from which they are paid shall be reimbursed from the appropriation made pursuant to subsection (a) to the extent of their salaries and allowances for services performed while so detailed.

(c) The Secretary of the Treasury shall include in his annual report to Congress a full account of the administration of this title.

TITLE VII—SOCIAL SECURITY BOARD

ESTABLISHMENT

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the

"Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

DUTIES OF SOCIAL SECURITY BOARD

SEC. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

EXPENSES OF THE BOARD

SEC. 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

REPORTS

SEC. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT

INCOME TAX ON EMPLOYEES

SECTION 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

DEDUCTION OF TAX FROM WAGES

SEC. 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(b) If more or less than the correct amount of tax imposed by section 801 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

DEDUCTIBILITY FROM INCOME TAX

SEC. 803. For the purposes of the income tax imposed by Title I of the Revenue Act of 1934 or by any Act of Congress in substitution therefor, the tax imposed by section 801 shall not be allowed as a deduction to the taxpayer in computing his net income for the year in which such tax is deducted from his wages.

EXCISE TAX ON EMPLOYERS

SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to hav-

ing individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

ADJUSTMENT OF EMPLOYERS' TAX

SEC. 805. If more or less than the correct amount of tax imposed by section 804 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

REFUNDS AND DEFICIENCIES

SEC. 806. If more or less than the correct amount of tax imposed by section 801 or 804 is paid or deducted with respect to any wage payment and the overpayment or underpayment of tax cannot

be adjusted under section 802 (b) or 805 the amount of the overpayment shall be refunded and the amount of the underpayment shall be collected, in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this title.

COLLECTION AND PAYMENT OF TAXES

SEC. 807. (a) The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802 (b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue

Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

(d) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

RULES AND REGULATIONS

SEC. 808. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title.

SALE OF STAMPS BY POSTMASTERS

SEC. 809. The Commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 807 for the collection or payment of any tax imposed by this title, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as (1) are located in county seats, or (2) are certified by the Secretary of the Treasury to the Postmaster General as necessary to the proper administration of this title. The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of,

and render accounts to, the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe. The Postmaster General shall at least once a month transfer to the Treasury as internal-revenue collections all receipts so deposited together with a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this Act, and the Secretary of the Treasury is hereby authorized and directed to advance from time to time to the credit of the Post Office Department from appropriations made for the collection of the taxes imposed by this title, such sums as may be required for such additional expenditures incurred by the Post Office Department.

PENALTIES

SEC. 810. (a) Whoever buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device, prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, shall be fined not more than $1,000 or imprisoned for not more than six months, or both.

(b) Whoever, with intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed by the Commissioner of Internal Revenue under section 807 for the collection or payment of any tax imposed by this title, or uses, sells, lends, or has in his pos-

session any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITIONS

SEC. 811. When used in this title—

(a) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE

IMPOSITION OF TAX

SECTION 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

CREDIT AGAINST TAX

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

CERTIFICATION OF STATE LAWS

SEC. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona-fide labor organization.;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

UNEMPLOYMENT TRUST FUND

SEC. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest,

computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not

exceeding the amount standing to the account of such State agency at the time of such payment.

ADMINISTRATION, REFUNDS, AND PENALTIES

SEC. 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval

of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded un-

less it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

INTERSTATE COMMERCE

SEC. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

DEFINITIONS

SEC. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of a crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of

twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

RULES AND REGULATIONS

SEC. 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

ALLOWANCE OF ADDITIONAL CREDIT

SEC. 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions imposed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser—

(1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or

(2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

(b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE

SEC. 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate, with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than 7½ per centum of the total wages payable by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts

to not less than 7½ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

(c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment account" means a separate account, in an unem-

ployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties,

from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience", as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

TITLE X—GRANTS TO STATES FOR AID TO THE BLIND

APPROPRIATION

SECTION 1001. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby author-

ized to be appropriated for the fiscal year ending June 30, 1936, the sum of $3,000,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board, State plans for aid to the blind.

STATE PLANS FOR AID TO THE BLIND

SEC. 1002. (a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be fur-

nished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act.

(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

PAYMENT TO STATES

SEC. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing July 1, 1935, (1) an amount, which shall be used exclusively as aid to the blind, equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan with respect to each individual who is blind and is not an inmate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds $30, and (2) 5 per centum of such amount, which shall be used for paying the costs of administering

the State plan or for aid to the blind, or both, and for no other purpose.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under clause (1) of subsection (a) for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified, increased by 5 per centum.

OPERATION OF STATE PLANS

SEC. 1004. In the case of any State plan for aid to the blind which has been approved by the Board, if the Board, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002 (b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002 (a) to be included in the plan;

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

ADMINISTRATION

SEC. 1005. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $30,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 1006. When used in this title the term "aid to the blind" means money payments to blind individuals.

TITLE XI—GENERAL PROVISIONS

DEFINITIONS

SECTION 1101. (a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

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(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

RULES AND REGULATIONS

SEC. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

SEPARABILITY

SEC. 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

RESERVATION OF POWER

SEC. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

SHORT TITLE

SEC. 1105. This Act may be cited as the "Social Security Act."

Approved, August 14, 1935.

APPENDIX B

TABLE I.—*Illustrative monthly Federal old-age benefits under Title II*

Average monthly salary	Years of employment								
	5	10	15	20	25	30	35	40	45
$25	(1)	$15.00	$16.25	$17.50	$18.75	$20.00	$21.25	$22.50	$23.75
$50	$15.00	17.50	20.00	22.50	25.00	27.50	30.00	32.50	35.00
$75	16.25	20.00	23.75	27.50	31.25	35.00	38.75	42.50	46.25
$100	17.50	22.50	27.50	32.50	37.50	42.50	47.50	51.25	53.75
$125	18.75	25.00	31.25	37.50	43.75	50.00	53.13	56.25	59.38
$150	20.00	27.50	35.00	42.50	50.00	53.75	57.50	61.25	65.00
$175	21.25	30.00	38.75	47.50	53.13	57.50	61.88	66.25	70.63
$200	22.50	32.50	42.50	51.25	56.25	61.25	66.25	71.25	76.23
$225	23.75	35.00	46.25	53.75	59.38	65.00	70.63	76.25	81.88
$250	25.00	37.50	50.00	56.25	62.50	68.75	75.00	81.25	85.00

[1] Lump sum payment of $52.50.

Source: H. Rep. No. 615, 74th Cong., 1st sess.

TABLE II.—*Number and percent of aged in the population, 1870–1980* [1]

Year	Total population	Persons 65 years of age and over	
		Number	Percent of total
1870	38,558,371	1,153,649	2.99
1880	50,155,783	1,723,459	3.4
1890	62,622,250	2,417,288	3.9
1900	75,994,575	3,080,498	4.0
1910	91,972,266	3,949,524	4.3
1920	105,710,620	4,933,215	4.7
1930	122,775,046	6,633,805	5.4
1936	128,006,000	7,700,000	6.0
1940	131,993,100	8,419,000	6.3
1950	141,644,800	11,213,300	7.9
1960	149,371,600	14,841,700	9.9
1970	154,969,300	18,042,900	11.6
1980	158,335,200	22,189,800	14.0

[1] Source: Data from 1870–1930 from U. S. Census volumes on population. Estimated figures for July 1, 1936, computed by Division of Public Assistance Statistics of Social Security Board and Bureau of Census. Estimates 1940–80 from An Empirical Method of Calculating Future Population, by P. K. Whelpton, Journal of the American Statistical Association, September 1936, vol. 31, no. 195, pp. 457–473.

TABLE III.—*Percentage distribution of the total population by age groups, 1850–1930* [1]

Year	Percentage distribution by specified age groups						
	Total	0–4	5–19	20–29	30–44	45–64	65+
1850	100.0	15.1	37.4	18.5	[2] 16.6	[2] 9.9	[2] 2.6
1860	100.0	15.4	35.8	18.2	[2] 17.4	[2] 10.4	[2] 2.7
1870	100.0	14.3	35.4	17.7	17.7	11.9	[2] 3.0
1880	100.0	13.8	34.3	18.3	17.6	12.6	3.4
1890 [3]	100.0	12.2	33.9	18.3	18.6	13.1	3.9
1900	100.0	12.1	32.3	18.3	19.5	13.7	4.1
1910	100.0	11.6	30.4	18.8	20.3	14.6	4.3
1920	100.0	11.0	29.8	17.4	21.0	16.1	4.7
1930	100.0	9.3	29.5	16.9	21.5	17.5	5.4

[1] Source: Thompson, Warren S., and Whelpton, P. W., Population Trends in the United States, 1933, p. 109.

[2] Number of persons 40 to 44 and 60 to 64 is estimated from those 40 to 49 and 60 to 69.

[3] Excluding 325,464 in Indian territory and on Indian reservations for whom age data are not available.

TABLE IV.—*Future population of the United States according to medium fertility and mortality trends and allowing net immigration of 100,000 annually beginning in 1940* [1]

[Thousands]

Age period	1930 [2]	1940	1950	1960	1970	1980
0 to 4	11,453.4	10,395.1	10,623.4	10,117.2	9,882.1	9,673.1
5 to 9	12,617.4	10,764.3	11,113.1	10,961.4	10,479.7	10,314.2
10 to 14	12,014.0	11,863.0	10,895.2	11,161.2	10,663.1	10,360.3
15 to 19	11,561.0	12,424.8	10,726.8	11,079.5	10,934.1	10,459.3
20 to 24	10,878.8	11,759.9	11,852.2	10,918.8	11,187.1	10,690.5
25 to 29	9,841.2	11,218.5	12,378.8	10,752.5	11,112.8	10,978.1
30 to 34	9,127.3	10,466.1	11,596.0	11,732.8	10,847.4	11,119.5
35 to 39	9,215.8	9,360.0	10,907.6	12,095.7	10,550.4	10,918.3
40 to 44	7,906.3	8,592.0	10,039.7	11,206.0	11,381.2	10,543.7
45 to 49	7,047.7	8,525.3	8,820.4	10,389.8	11,598.1	10,140.3
50 to 54	5,980.3	7,206.2	7,900.3	9,359.2	10,666.4	10,777.3
55 to 59	4,649.2	6,110.9	7,555.0	7,974.3	9,554.1	10,737.2
60 to 64	3,754.0	4,888.0	6,023.0	6,781.5	8,239.5	9,436.6
65 to 69	2,772.5	3,483.3	4,666.4	5,972.6	6,543.2	8,045.4
70 to 74	1,951.5	2,444.6	3,273.9	4,222.2	5,025.3	6,323.3
75 to 79	1,107.3	1,450.3	1,891.0	2,686.2	3,687.7	4,218.0
80 to 84	535.2	722.6	951.6	1,375.6	1,914.9	2,372.6
85 to 89	205.7	245.8	332.8	455.0	683.6	962.7
90 to 94	51.6	61.5	84.3	112.1	164.1	229.9
95 plus	14.9	10.9	13.2	18.0	24.5	37.9
Total	122,775.1	131,993.1	141,644.8	149,371.6	154,969.3	158,335.2

[1] Source: Whelpton, P. K., An Empirical Method of Calculating Future Population, *Journal of the American Statistical Association*, vol. 31, no. 195, pp. 457–473, September 1936, p. 472.

[2] Census.

TABLE V.—*Age at which earnings were impaired and at which they ceased, in a group of workers in Pittsburgh, Reading, and Philadelphia, 1919* [1]

Age group	Age when earnings impaired		Age when earnings stopped	
	Number	Percent	Number	Percent
All ages	658	100.0	490	100.0
Under 30 years	21	3.2	.....	.....
30 to 40 years	32	4.8	15	3.0
40 to 50 years	152	23.2	55	11.2
50 to 55 years	126	19.2	64	13.0
55 to 60 years	112	17.1	70	14.2
60 to 65 years	109	16.6	102	21.0
65 to 70 years	52	7.8	81	16.5
70 to 75 years	41	6.2	74	15.1
75 years and over	13	1.9	29	6.0

[1] Source: Report of the Pennsylvania Commission on Old-Age Pensions, Harrisburg, Pa., 268 pp., 1919, p. 104.

TABLE VI.—*Dependency of aged population of New York, July 1, 1929* [1]

Class	Persons 65 and over		Persons 70 and over	
	Number	Percent	Number	Percent
Estimated total	603,700	100.0	350,400	100.0
Self-dependent:				
Pensioners:				
Public	50,390	8.3	38,478	11.0
Federal, civil, and military retirement	4,654	.....	3,600	.....
Federal military	26,394	.....	18,942	.....
State and local retirement	18,725	.....	15,500	.....
Military homes	617	.....	436	.....
Private	10,937	1.8	10,557	3.0
Industrial	7,826	.....	7,826	.....
Fraternal	502	.....	502	.....
Trade union	2,089	.....	2,059	.....
Compensation	550	.....	170	.....
Self-supporting on current earnings (excluding housewives)	172,000	28.5	60,000	17.0
Self-support on income	30,190	5.0	17,500	5.0

[1] Source: Old-Age Security, Report of the New York State Commission, Legislative Document no. 67, 692 pp., 1930, p. 39.

TABLE VI.—*Dependency of aged population of New York, July 1, 1929*—Continued

Class	Persons 65 and over		Persons 70 and over	
	Number	Percent	Number	Percent
Dependant on friends, relatives, etc.:				
Private homes	5,954	1.0	5,400	1.5
Other persons: (including housewives)	297,799	49.4	194,402	55.6
Dependent on organized charity:				
Public	12,924	2.1	9,095	2.6
New York City:				
Blind	416		258	
Veterans	259		200	
Child welfare	236		184	
Ex-firemen	539		490	
Almshouse	1,835		1,210	
Other areas:				
Towns	2,200		1,500	
Cities	2,600		1,600	
Blind	265		100	
Almshouses and public homes	4,674		3,553	
Private	8,421	1.4	6,740	1.9
New York City	1,963		1,140	
Cities	1,100		700	
Private homes	5,358		4,900	
Confined by government for social reasons	15,104	2.5	8,228	2.4
Mental defectives	14,722		8,040	
Prisons	214		104	
Local jails	168		84	

TABLE VII.—*Number of pensioners, amount of pension, and amounts disbursed therefor in last fiscal year and whole period, prior to 1928, by unions*[1]

	Number present in in receipt of pension	Amount of pension per member	Amount paid in pensions in—	
			Latest fiscal year	Whole period of operation
Total	11,269		$3,260,238	$21,584,842
Bricklayers	[2] 2,954	$7 per week	1,021,358	7,160,205
Bridge and structural iron workers	331	$25 per month	86,300	([3])
Electrical workers	([4])	$40 per month	([4])	([4])
Granite cutters	405	$60 per year [5]	16,335	241,044
Locomotive engineers	[6] 4,467	$25 to $65 per month [7]	998,519	4,632,567
Locomotive firemen and enginemen	230	$30 to $70 per month [8]	([3])	141,407
Printers	2,430	$8 per week	990,272	8,740,939
Printing pressmen	244	$7 per week	60,974	
Quarry workers	[9] 18	$50 [10]	900	6,350
Railroad trainmen	[11] 110	$35 to $70 per month	31,080	78,330
Street railway employees	[9] 80	$800 in lump sum	64,000	384,000

[1] Source: Old Age and Disability Pensions, Senate Document No. 140, 70th Cong., 1st sess., May 1928, p. 155.

[2] Includes 76 persons receiving "disability relief" and 823 widows.

[3] No data.

[4] No payments being made as yet. System adopted in 1927.

[5] $10 per month for 6 months of year.

[6] Includes 1,533 widows.

[7] From this, union dues of about $4 per month are deducted.

[8] Widows receive pensions of $35 per month.

[9] Received the lump sum in 1926.

[10] Flat sum, deducted from death benefit.

[11] Includes 13 widows.

TABLE VIII.—*Benefits paid by national and international trade unions, 1929–34, by type of benefit*[1]

Type of benefit	1929	1930	1931	1932	1933	1934
All types of benefit	$32,242,446	$36,697,980	$39,961,873	$51,448,349	[2] $40,692,113	$28,840,644
Sickness	2,831,937	3,649,703	2,220,975	2,308,040	1,665,266	1,023,314
Death	17,598,287	18,527,095	17,132,023	17,674,384	14,780,206	15,011,044
Unemployment	276,718	3,311,280	9,146,724	19,970,557	13,784,043	4,467,802
Old age	4,883,028	5,910,993	6,090,743	6,148,302	4,678,636	3,912,940
Disability	2,707,188	3,234,067	3,671,380	4,006,891	4,837,730	3,176,014
Miscellaneous	3,945,288	2,064,840	1,700,028	1,340,175	946,231	1,409,530

[1] Source: Handbook of Labor Statistics 1936 Edition, Bull. No. 616, United States Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1936, p. 392.

[2] Not the sum of the items, but as given in the report.

TABLE IX.—*Old-age assistance for month of February 1937 in States reporting to the Social Security Board (data reported by State agencies, corrected to Mar. 25, 1937)*

States with plans approved by the Social Security Board	Old-age assistance for February 1937					
	Number of recipients [1]	Amount of obligation incurred for payments to recipients for the month [2]	Average per recipient	Percentage increase (+) or decrease (−) from last month		Number of recipients per 1,000 estimated population 65 and over [4]
				In number of recipients	In amount of payments to recipients	
Total	1,196,423	$22,440,366	$18.76	[5] +4.4	[5] +4.0	[5] 172
1. Alabama	[7] 10,799	[7] 112,916	10.46	+1.0	+.9	89
2. Arkansas	15,158	136,982	9.04	−1.0	−1.0	163
3. California	68,034	2,147,517	31.56	+3.5	+3.6	154
4. Colorado	27,709	767,106	27.68	+2.3	+2.3	388
5. Connecticut	12,591	295,788	23.49	+3.0	−6.1	111
6. Delaware	2,998	32,097	10.71	−.4	−.2	146
7. District of Columbia	1,772	44,862	25.32	+9.6	+9.6	45
8. Florida	9,017	97,732	10.84	+8.8	+8.8	100
9. Hawaii	594	7,980	13.43	[6]	+17.3	57
10. Idaho	8,115	189,238	23.32	+1.3	+1.4	296
11. Illinois	113,093	1,816,354	16.06	+6.8	+8.9	232
12. Indiana	36,377	541,866	14.90	+2.7	+4.5	134
13. Iowa	31,034	459,871	14.82	+2.5	+3.0	106
14. Kentucky	17,812	178,988	10.05	+15.4	+15.6	100
15. Louisiana	15,120	182,850	12.09	+9.9	+7.8	176
16. Maine	3,830	76,774	20.04	−.3	−.3	46
17. Maryland	12,860	220,337	17.13	+.3	+1.5	120
18. Massachusetts	[8] 52,226	[8] 1,389,360	[8] 26.60	[9]	[9]	[9]
19. Michigan	34,043	568,089	16.69	+1.6	+2.4	121
20. Minnesota	58,338	1,111,796	19.06	+1.8	+2.4	309
21. Mississippi	17,953	72,095	4.02	+1.0	+.6	207
22. Missouri	55,335	632,292	11.43	−1.0	−1.0	184
23. Montana	[10] 8,802	[10] 181,184	[10] 20.58	+1.2	+2.1	298
24. Nebraska	25,570	460,375	18.00	+1.8	+4.0	268
25. New Hampshire	3,266	71,675	21.94	+1.1	+2.7	64
26. New Jersey	22,616	372,264	16.46	+1.8	+2.5	93
27. New Mexico	[11]	[11]	[11]	[11]	[11]	[11]

[1] Source: Bureau of Research and Statistics, Division of Public Assistance Statistics, Social Security Board, vol. II, no. 2, February 1937, table 201.3-2.

[2] The number reported in this column is the number of individuals whose applications for old-age assistance have been approved formally.

[3] Amount of payments to recipients from Federal, State, and local funds, administrative expenses excluded.

[4] Estimated with the advice of the United States Bureau of the Census as of Jan. 1, 1937.

[5] Comparison for 40 States, excludes Massachusetts and New Mexico.

[6] For 40 States, excludes Massachusetts and New Mexico.

[7] Of this number, there were 2,035 Confederate pensioners receiving $46,080, an average payment of $22.64. The average payment for the remainder of the case load was $7.63.

[8] No change.

[9] Preliminary figures.

[10] Preliminary figures subject to revision.

[11] No payments for old-age assistance for this month.

TABLE IX.—*Old-age assistance for month of February 1937 in States reporting to the Social Security Board (data reported by State agencies, corrected to Mar. 25, 1937*—Continued

States with plans approved by the Social Security Board	Old-age assistance for February 1937					
	Number of recipients [1]	Amount of obligations incurred for payments to recipients for the month [1]	Average per recipient	Percentage increase (*K*) or decrease (*N*) from last month		Number of recipients per 1,000 estimated population 65 and over [1]
				In number of recipients	In amount of payments to recipients	
28. New York	82,610	1,769,414	21.42	+8.2	+8.4	107
29. North Dakota	6,634	106,058	15.99	+2.7	+3.3	188
30. Ohio	[10] 101,233	[10] 2,405,894	[10] 23.76	+1.5	−.8	215
31. Oklahoma	50,770	736,453	14.50	+8.1	+10.2	441
32. Oregon	12,139	258,633	21.30	+.4	+1.2	150
33. Pennsylvania	70,917	1,541,310	21.73	+4.7	+4.7	118
34. Rhode Island	3,671	64,178	17.48	+6.9	+7.7	83
35. South Dakota	13,039	242,533	18.60	−.2	−9.8	316
36. Texas	103,195	1,514,489	14.68	+10.8	+8.6	378
37. Utah	5,691	128,712	22.62	+4.8	+4.9	220
38. Vermont	3,874	44,540	11.50	−.9	+.1	104
39. Washington	29,619	605,931	20.46	+3.0	+3.1	253
40. West Virginia	[11] 10,316	[11] 131,012	[11] 12.70	+47.4	+48.3	118
41. Wisconsin	35,004	667,633	19.07	+1.4	+2.2	164
42. Wyoming	2,651	55,388	20.89	+1.6	+2.2	261

[10] Preliminary figures subject to revision.

[11] Preliminary figures to be revised to include retroactive grants.

TABLE X—*Operation under State and Federal laws providing for old-age assistance during 1936*

State	Source of funds—(F), Federal; (S), State; (C), County; (T), Territorial; (D), District	Estimated population 65 years and over January 1, 1937 [1]	Number of aged persons estimated to be in need of assistance during 1937	Number of recipients of old-age assistance for December 1936	Estimated amount paid to recipients for 1936 [2]	Monthly payments	
						Maximum amount payable per month	Average payment per recipient for December 1936
United States		7,816,000	1,691,400	1,111,054	$161,919,996		$18.76
Alabama	(F), (S), (C)	121,000	12,000	10,733	929,831	$30	10.72
Arizona	(S), (C)	17,000	3,000	2,000	160,000	30	25.00
Arkansas	(F), (S)	93,000	19,000	14,857	849,069	30	9.01
California	(F), (S), (C)	441,000	68,000	63,172	17,271,860	35	31.36
Colorado	(F), (S)	72,000	29,000	26,586	6,171,009	30	27.65
Connecticut	(F), (S)	114,000	23,000	11,632	1,974,875	28	26.27
Delaware	(F), (S)	21,000	4,000	3,057	295,637	25	10.63
District of Columbia	(F), (D)	40,000	2,000	1,386	145,812	None	25.21
Florida	(F), (S), (C)	90,000	18,000	7,245	738,360	30	10.90
Georgia	(3)	134,000	27,000	(3)	(3)	(3)	(3)
Idaho	(F), (S), (C)	27,000	8,000	7,924	1,679,713	30	23.30
Illinois	(F), (S)	487,000	122,000	93,452	5,793,886	30	15.38
Indiana	(F), (S), (C)	281,000	56,000	34,740	4,021,209	30	14.30
Iowa	(F), (S)	213,000	43,000	29,704	5,016,025	25	14.69
Kansas	(3)	145,000	29,000	(3)	(3)	(3)	(3)
Kentucky	(F), (S)	177,000	35,000	11,522	454,232	15	9.98

[1] Estimated with the advice of the U. S. Bureau of the Census.
[2] Amount of payments to recipients, from Federal, State, and local funds, administrative expenses excluded.
[3] No State law for old-age assistance during 1936.

TABLE X.—*Operation under State and Federal laws providing for old-age assistance during 1936*—Continued

State	Source of funds—(F), Federal; (S), State; (C), County; (T), Territorial; (D), District	Estimated population 65 years and over January 1, 1937 [1]	Number of aged persons estimated to be in need of assistance during 1937	Number of recipients of old-age assistance for December 1936	Estimated amount paid to recipients for 1936 [2]	Monthly payments	
						Maximum amount payable per month	Average payment per recipient for December 1936
Louisiana	(F), (S), (C)	86,000	17,000	12,891	867,263	None	12.70
Maine	(F), (S)	83,000	4,000	3,934	381,183	30	20.05
Maryland	(F), (S), (C)	107,000	21,000	12,482	1,768,638	30	16.46
Massachusetts	(F), (S), Town	320,000	64,000	47,979	9,751,500	None	26.25
Michigan	(F), (S)	281,000	56,000	32,705	5,227,731	30	16.47
Minnesota	(F), (S), (C)	189,000	60,000	56,696	7,504,637	30	18.85
Mississippi	(F), (S)	87,000	19,000	17,892	931,787	15	3.92
Missouri	(F), (S)	302,000	60,000	56,276	4,027,258	30	11.43
Montana	(F), (S), (C)	30,000	9,000	8,243	1,246,752	None	20.41
Nebraska	(F), (S)	96,000	26,000	24,456	3,050,914	30	17.31
Nevada	(C)	6,000	1,000	1,000	144,000	30	12.00
New Hampshire	(F), (S), (C)	51,000	4,000	3,176	672,116	30	21.51
New Jersey	(F), (S), (C)	243,000	49,000	21,681	3,516,368	30	16.21
New Mexico	(F), (S)	19,000	4,000	2,841	228,226	30	16.73
New York	(F), (S), Local	771,000	154,000	72,320	15,595,000	None	21.41
North Carolina	(3)	143,000	29,000	(4)	(4)	(4)	(4)
North Dakota	(F), (S), (C)	35,000	7,000	6,307	721,456	30	15.84
Ohio	(F), (S)	470,000	103,000	99,465	20,878,259	30	24.51
Oklahoma	(F), (S)	115,000	52,000	44,023	2,726,579	30	13.70
Oregon	(F), (S), (C)	81,000	16,000	11,982	2,573,810	30	21.11
Pennsylvania	(F), (S)	603,000	121,000	62,036	13,454,150	30	21.70
Rhode Island	(F), (S)	44,000	4,000	3,242	400,993	30	17.33
South Carolina	(3)	69,000	14,000	(4)	(4)	(4)	(4)

South Dakota	(F), (S)	41,000	12,000	10,067	409,776	30	21.21
Tennessee	(3)	147,000	29,000	(2)	(2)	(2)	(2)
Texas	(F), (S)	275,000	105,000	101,319	7,694,171	30	15.16
Utah	(F), (S), (C)	26,000	6,000	5,294	906,056	30	22.53
Vermont	(F), (S)	37,000	4,000	3,967	547,041	30	11.34
Virginia	(3)	146,000	29,000	(2)	(2)	(2)	(2)
Washington	(F), (S), (C)	117,000	30,000	28,142	4,683,950	30	20.43
West Virginia	(F), (S)	87,000	17,000	4,786	72,221	30	12.44
Wisconsin	(F), (S), (C)	213,000	43,000	34,087	5,735,668	30	18.84
Wyoming	(F), (S), (C)	10,000	3,000	2,560	479,272	30	20.87
Alaska	(T)	3,000	700	600	144,000	.....	20.00
Hawaii	(F), (T), (C)	10,000	700	595	77,703	30	11.45

[2] No State law for old-age assistance during 1936.
Source: Social Security Board (4–23–37).

TABLE XI.—*Amount of obligations incurred for emergency relief by sources of funds, by States,*[1] *January 1933 through December 1935*

State	Obligations incurred for emergency relief[2]						
	Total	Federal funds		State funds		Local funds	
		Amount	Percent	Amount	Percent	Amount	Percent
Alabama	$47,318,378	$44,762,571	94.6	$312,212	0.7	$2,243,593	4.7
Arizona	19,214,371	16,170,501	84.2	2,660,321	13.8	383,549	2.0
Arkansas	41,524,168	40,001,661	96.3	306,136	.8	1,217,368	2.9
California	235,096,613	158,041,750	67.2	38,209,480	16.3	38,845,383	16.5
Colorado	46,509,880	39,269,117	84.4	2,100,257	4.5	5,140,506	11.1
Connecticut	53,526,634	23,514,388	43.9	5,300,394	9.9	24,711,852	46.2
Delaware	5,194,435	2,103,468	40.5	2,107,942	40.6	983,025	18.9
District of Columbia	20,012,872	14,665,529	73.3	0	0	5,347,343	26.7
Florida	42,376,989	40,361,552	95.3	15,492	(3)	1,999,945	4.7
Georgia	47,730,325	44,793,264	93.8	5	(3)	2,937,056	6.2
Idaho	15,883,655	13,359,321	84.1	806,612	5.1	1,717,722	10.8
Illinois	308,672,762	232,791,591	75.4	62,119,849	20.1	13,761,322	4.5
Indiana	80,303,842	51,782,792	64.5	164,635	.2	28,356,415	35.3
Iowa	41,764,128	24,126,482	57.8	4,169,752	10.0	13,467,894	32.2
Kansas	54,747,935	39,949,245	73.0	470,877	.9	14,327,813	26.1
Kentucky	45,078,692	38,819,639	86.1	2,573,998	5.7	3,685,055	8.2
Louisiana	53,126,959	51,496,793	96.9	1,697	(3)	1,629,469	3.1
Maine	23,299,386	11,787,577	50.6	2,087,142	9.0	9,424,667	40.4
Maryland	45,916,020	33,349,321	72.6	10,127,288	22.1	2,439,411	5.3
Massachusetts	218,996,550	114,510,390	52.3	560,381	.3	103,925,779	47.4
Michigan	173,020,332	127,137,454	73.5	26,466,306	15.3	19,416,572	11.2
Minnesota	88,657,414	67,695,056	76.3	5,545,818	6.3	15,416,540	17.4
Mississippi	32,179,719	30,948,147	96.2	208,334	.6	1,023,238	3.2
Missouri	82,747,423	64,083,417	77.4	9,008,186	10.9	9,655,820	11.7
Montana	25,334,633	22,439,392	88.6	451,219	1.8	2,444,022	9.6
Nebraska	28,091,784	21,583,107	76.8	2,748	(3)	6,505,929	23.2
Nevada	5,724,742	5,074,574	88.6	130,489	2.3	519,679	9.1
New Hampshire	12,299,611	5,493,617	44.7	3,664,359	29.8	3,141,635	25.5
New Jersey	138,413,433	94,725,915	68.4	32,832,757	23.7	10,854,761	7.9
New Mexico	15,269,713	14,738,853	96.5	351,293	2.3	179,567	1.2
New York	726,684,294	385,601,208	53.1	125,445,319	17.2	215,637,767	29.7
North Carolina	39,657,112	38,402,296	96.8	0	0	1,254,816	3.2
North Dakota	28,802,104	24,856,991	86.3	41,938	.1	3,903,175	13.6
Ohio	219,473,200	170,540,527	77.8	33,017,460	15.0	15,915,213	7.2
Oklahoma	51,874,144	44,864,484	86.5	364,785	.7	6,644,875	12.8
Oregon	27,717,907	22,018,553	79.4	2,582,754	9.3	3,116,600	11.3
Pennsylvania	446,355,327	316,686,933	70.9	104,695,574	23.5	24,972,820	5.6
Rhode Island	20,190,295	7,940,253	39.3	5,299,281	26.3	6,950,761	34.4
South Carolina	36,613,734	35,866,576	98.0	1,324	(3)	745,834	2.0

[1] Source: Monthly Report of the Federal Emergency Relief Administration, July 1 through June 30, 1936. Washington. D. C., 1937, p. 57.

[2] Includes obligations incurred for relief extended under the general relief program, under all special programs, and for administration; beginning April 1934 these figures also include purchases of materials, supplies, and equipment, rental of equipment (such as team and truck hires), earnings of nonrelief persons employed, and other expenses incident to the Emergency Work Relief Program.

[3] Less than 1/10 of 1 percent

TABLE XI.—*Amount of obligations incurred for emergency relief by sources of funds, by States, January 1933 through December 1935*—Continued

State	Obligations incurred for emergency relief						
	Total	Federal funds		State funds		Local funds	
		Amount	Percent	Amount	Percent	Amount	Percent
South Dakota	35,967,208	32,234,557	89.6	0	0	3,722,651	10.4
Tennessee	36,897,618	34,449,851	93.4	893,324	2.4	1,554,443	4.2
Texas	97,152,410	76,693,808	78.0	19,412,654	20.0	1,045,948	1.1
Utah	25,041,740	19,754,620	78.9	3,370,051	13.5	1,917,069	7.6
Vermont	6,013,946	3,406,100	56.6	39,845	.7	2,568,001	42.7
Virginia	26,361,447	23,779,324	90.2	34,452	.1	2,547,671	9.7
Washington	48,890,429	39,965,184	81.7	5,919,720	12.1	3,005,525	6.2
West Virginia	57,232,504	50,655,633	88.5	5,016,987	8.8	1,559,884	2.7
Wisconsin	109,901,020	79,669,888	72.5	4,234,316	3.8	25,996,816	23.7
Wyoming	7,734,461	7,044,855	91.2	267,039	3.5	412,567	5.3
Total, continental United States	4,096,574,293	2,904,007,125	70.9	523,391,802	12.8	669,175,366	16.3

TABLE XII.—*Means of support of persons 65 years of age and over in the United States, compiled and estimated, 1937* [1]

Means of support	Number	
	Subtotal	Grand total
Total estimated number of persons 65 and over in the United States, Jan. 1, 1937		[2] 7,816,000
A. Self-dependent [3]		[3] 2,708,824
1. In receipt of current earnings	[4] 1,000,000	
2. Possessing savings or real estate	[5] 1,170,000	
3. Federal pensions:		
Military service	[6] 45,728	
Civil service	[7] 44,708	

[1] Economic Insecurity in Old Age (Social Security Board, 1937) p. 4, table 1. Compiled from latest data available from indicated sources.

[2] Estimated on the advice of the Bureau of the Census by the Division of Public Assistance Statistics, Bureau of Research and Statistics, Social Security Board.

[3] Many persons in this group are partially dependent even though they have some income from earnings, property, savings, or investments. Perhaps only one-fourth are completely self-dependent. There is no way to obtain exact information on this point.

[4] Estimate by William Green, Economic Security Act, hearings before the Committee on Ways and Means, House of Representatives, 74th Congress, 1st session, on S. 1130, Washington, D. C., 1935, pp. 168, 1114.

[5] This estimate of 15 percent may be too high.

[6] Estimate by the U. S. Veterans' Administration of number of military pensioners 65 and over. The total number of veterans receiving compensation or disability pensions is 594,831 at this time.

[7] "Operations of Federal Civil-Service Retirement and Disability Fund, 1934", U. S. Department of Labor, Bureau of Labor Statistics, Bull. No. 616, 1936, p. 609.

TABLE XII.—*Means of support of persons 65 years of age and over in the United States, compiled and estimated, 1937*—Continued

Means of support	Number	
	Subtotal	Grand Total
4. State pensions:		
State employees	[9] 1,458	
Teachers	[9] 32,000	
5. Municipalities:		
Teachers	[9] 12,000	
Police and firemen	[9] 20,327	
Other municipal employees	[9] 4,619	
6. Private industrial pensions	[10] 140,000	
7. Group annuities	[11] 6,559	
8. Trade union pensions	[12] 10,000	
9. Other private pensions	[13] 16,000	
10. Insurance annuities	[14] 205,425	
B. Dependent		5,107,176
1. In receipt of public or private assistance	1,547,942	
In receipt of public assistance under the Social Security Act (Feb. 1937)	[15] 1,107,000	
In receipt of emergency unemployment or poor relief in their homes (non-institutional care)	[16] 200,000	
In receipt of earnings from Works Progress Administration June 1936	[17] 51,942	
In receipt of private charity	[16] 10,000	
In almshouses	[18] 50,000	

[9] Recent data not available. Incomplete figures for a few cities, reported in "Care of Aged Persons in the United States", U. S. Department of Labor, Bureau of Labor Statistics, Bull. No. 489, 1929, p. 3.

[9] Current Data from National Education Association, Washington, D. C. There are about 871,000 public school teachers in the United States, 64 percent of whom are covered by some sort of retirement system. The average allowance is about $700 per year. There are 23 State-wide systems and 59 local systems in operation. Four States have passed laws to become operative by or in 1939.

[10] Latimer, M. W., "Industrial Pension Systems in the United States and Canada", published by Industrial Relations Counselors, New York, 2 vols., 1195 pp., 1932, p. 996. (Data for 1931.)

[11] "Industrial Pension Systems in the United States and Canada", Industrial Relations Counselors, New York, 1936, p. 19.

[12] Latimer, M. W., "Trade Union Pension Systems", Industrial Relations Counselors, New York, 1930, pp. 136-143. (Data for 1929.)

[13] Including Carnegie teachers retirement fund, ministers retirement, fraternal organizations, etc. Data incomplete.

[14] *The Spectator*, April 15, 1937, p. 8.

[15] Social Security Board, Bureau of Research and Statistics, Division of Public Assistance Statistics, Vol. II, no. 2, Feb. 1937, table 201.3-2.

[16] Estimated.

[17] First Deficiency Appropriation Bill for 1937, Extract from Hearing before the Subcommittee of the Committee on Appropriations, House of Representatives, in Charge of Deficiency Appropriations, 75th Congress, 1st session, 1937, p. 153.

[18] "Paupers in Almshouses", U. S. Dept. of Commerce, Bureau of the Census, 1923. Increase in number of residents estimated.

TABLE XII.—*Means of support of persons 65 years of age and over in the United States, compiled and estimated, 1937*—Continued

Means of support	Number	
	Subtotal	Grand total
In public homes (Federal or State veterans' homes or homes for civilians)	[19] 17,000	
In hospitals for mental disease	[20] 60,000	
In prisons and jails	[21]	
In private homes for the aged	[19] 52,000	
2. Dependent on friends and relatives (wholly)	[22] 3,559,234	

[19] "Care of Aged Persons in the United States", U. S. Dept. of Labor, Bureau of Labor Statistics, Bull. No. 489, p. 15.

[20] "Statistical Abstract of the United States", 1934, p. 74.

[21] Very small number.

[22] This figure is derived by computation: total number of aged persons minus (A+B 1). Here will be included a small number of transients and homeless. This figure also reflects errors in preceding estimates, but is probably fairly accurate.

TABLE XIII.—*Median duration of unemployment since last usual occupation (in months) of gainful workers 16–64 years of age, by socio-economic class of usual occupation, by sex and race, and by age*

[Urban relief sample, May 1934]

Socio-economic class sex and race	Age groups (in years)						
	16 and over	16–19	20–24	25–34	35–44	45–54	55–64
All	23.0	8.5	16.4	21.5	25.4	28.1	30.3
Skilled	26.2	8.7	16.7	22.1	26.5	29.4	31.7
Semiskilled	21.5	8.3	16.3	20.9	25.0	27.5	29.3
Unskilled	22.2	8.2	15.0	20.5	24.7	27.9	30.4
Clerical	23.1	9.6	19.4	25.8	28.0	28.3	29.6
Proprietors	22.1	8.5	12.0	16.2	21.4	25.2	27.1
Professional	22.6	(1)	11.3	21.7	25.3	25.1	31.0
Male	24.2	9.3	16.9	21.1	25.9	28.9	31.0
Skilled	26.1	8.6	16.7	22.0	26.5	29.3	31.6
Semiskilled	22.3	9.0	16.7	20.0	25.1	28.4	30.7
Unskilled	25.2	9.0	16.6	21.8	27.2	30.0	31.8
Clerical	21.0	10.5	18.9	20.6	23.1	26.0	28.6
Proprietors	22.2	8.7	11.7	16.2	21.5	25.2	27.1
Professional	22.6	(1)	11.3	21.7	25.3	25.1	31.0
Female	19.4	7.6	15.5	22.6	23.4	23.3	24.6
Skilled	30.6	(1)	(1)	32.9	28.4	40.6	(1)
Semiskilled	19.7	7.6	15.4	23.3	24.6	23.7	23.7
Unskilled	16.6	7.5	12.4	18.5	19.4	20.7	23.0

[1] Less than 50 workers.

TABLE XIII.—*Median duration of unemployment since last usual occupation (in months) of gainful workers 16–64 years of age, by socio-economic class of usual occupation, by sex and race, and by age*—Continued

[Urban relief sample, May 1934]

Socio-economic class, sex and race	Age groups (in years)						
	16 and over	16–19	20–24	25–34	35–44	45–54	55–64
Female—Continued.							
Clerical	27.9	7.8	19.9	35.5	41.9	37.7	34.6
Proprietors	21.5	(1)	(1)	(1)	19.7	23.5	(1)
Professional [1]							
White	23.9	8.3	17.0	22.4	28.3	28.9	30.9
Skilled	26.3	8.9	17.0	22.3	26.5	29.6	31.7
Semiskilled	21.9	8.2	16.4	21.3	25.3	27.8	29.8
Unskilled	24.3	7.7	15.9	22.2	27.3	30.0	31.9
Clerical	23.3	9.5	19.5	26.0	28.1	28.4	29.8
Proprietors	22.2	8.7	11.3	16.1	21.2	25.2	27.2
Professional	23.3	(1)	11.3	22.1	25.9	26.0	31.5
Negro	20.2	9.1	14.5	19.4	22.7	24.7	27.2
Skilled	24.7	(1)	12.2	20.2	26.7	27.5	30.8
Semiskilled	19.6	9.2	15.9	19.3	23.2	25.0	24.9
Unskilled	19.9	9.1	14.0	19.3	21.9	24.3	27.1
Clerical	19.8	10.1	16.3	21.9	27.5	27.6	(1)
Proprietors	21.2	(1)	(1)	17.0	23.8	24.2	25.8
Professional	16.1	(1)	(1)	(1)	(1)	(1)	(1)

[1] Data for female professional workers were not tabulated.

TABLE XIV.—*Estimates of payments to beneficiaries under Title II*

[In thousands of dollars]

Calendar year	At death before retirement	At death after retirement	Lump-sum settlements	To annuitants
1937	$3,700		$2,300	
1942	36,200	$700	9,800	$35,000
1947	80,800	5,100	2,300	257,800
1952	131,200	11,000	100	548,400
1957	185,500	18,300	100	913,800
1962	245,000	27,600	100	1,379,600
1967	297,500	34,700	100	1,733,100
1972	346,600	43,600	100	2,180,400
1977	400,300	54,600	100	2,729,400

TABLE XV.—*Estimates of coverage and beneficiaries under Title II*

[In thousands of persons]

Calendar year	Number covered	Number dying before retirement	Number lump-sum settlements	Number annuitants
1937	25,337	191.3	123	.....
1942	26,578	208.8	85	175
1947	27,821	233.8	35	1,121
1952	29,063	259.9	3	2,085
1957	30,305	286.9	3	3,016
1962	31,547	314.1	3	3,843
1967	32,789	339.7	3	4,410
1972	34,031	365.9	3	4,933
1977	34,776	388.9	3	5,525

APPENDIX C

United States Circuit Court of Appeals for the First Circuit

No. 3213—October Term, 1936

George P. Davis, plaintiff, appellant

v.

Boston & Maine Railroad et al., appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

Before Bingham, Wilson and Morton, J.J.

OPINION OF THE COURT

April 14, 1937

Wilson, J. This is an appeal from a decree of the District Court of Massachusetts denying an injunction against the defendants and dismissing the plaintiff's bill.

The original bill attacked the constitutionality of both Chap. 531, 49 Stat. 620, known as the Social Security Act, and Chap. 151A of the Massachusetts General Laws (see Chap. 479 of the Acts and

Resolves of 1935); but after intervention by the Commissioner and Collector of Internal Revenue and the filing of answers and a motion to strike by the intervening defendants, it was stipulated by all the parties that: "the only issue involved in the case, either directly or indirectly, is whether Title IX of Chap. 531, 49 Stat. 620, approved Aug. 14, 1935, is an Act of Congress within its powers under the Constitution of the United States, or in violation of the Fifth Amendment thereof; and the only way in which that issue is raised is with respect to the payments under that Title IX."

A stockholder in a corporation directly affected may properly invoke the jurisdiction of the Federal Courts to determine the constitutionality of the Act. *Carter* v. *Carter Coal Co.*, 298 U. S. 238; *United States* v. *Butler*, 297 U. S. 1.

The Social Security Act contains eleven titles, each having separate objects in view, viz: I. Old Age Assistance; II. Old Age Benefits; III. Unemployment Compensation; IV. Aid to Dependent Children; V. Maternal and Child Welfare; VI. Public Health Work; VII. The Creation of a Social Security Board; VIII. Taxes with respect to Employment; IX. Taxes for Benefit of Unemployment; X. Grants to State in Aid of the Blind; XI. General Provisions relating to Definitions, Rules and Separability of the Provisions of the Act. On its face the entire Act was passed to provide financial aid for the unfortunate, the dependent, and those incapacitated by age, or who for any reason are, temporarily, at least, unable to obtain gainful employment.

Title IX imposes a tax on employers of eight or more, except an employer of agricultural labor, domestic servants, or where the service is performed as an officer or member of a vessel on the navigable waters of the United States; or performed by an individual in the employ of son, daughter, or spouse; or by a child under 21 years of age in the employ of his father or mother; or performed in the employ of the United States, or of an instrumentality of the United States; or performed in the employ of a state or a political subdivision thereof, or of one or more states; or services performed in behalf of any charitable organization, or any corporation, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Apart from these exceptions, the salient features of Title IX are contained in the following provisions found in the footnote.[1]

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[1] SEC. 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year.

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total

The appellant assigned as error that the District Court erred in holding that Title IX is a valid Act

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credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

SEC. 903. (a) The Social Security Board shall approve any State laws submitted to it, within thirty days of submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal

of Congress within its powers under the Constitution of the United States.

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such law at any time. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the

Counsel for the appellant contends as grounds for holding that Title IX is unauthorized under the powers granted to Congress in the Federal Constitution the following: (1) that it is capricious and arbitrary in its exemptions; (2) that it is not uniform in its application; (3) that the tax imposed on employers is not what it is stated to be in the Act, namely, an excise tax, and is not imposed to provide for the general welfare of the United

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average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

States; (4) that in purpose and effect it is an attempt by Congress to enter into a domain hitherto considered as reserved to the states, and to coerce the states into doing something the federal government has no power to do, viz: to provide compensation for those prevented by any circumstances resulting in unemployment from earning a livelihood; and (5) that it seeks further to regulate indirectly the relations between employee and employer.

We pass over the question of capriciousness and lack of uniformity as not being essential for the determination of the case, although a three judge court in the middle district of Alabama, in *Southern Coal & Coke Co.* v. *Attorney General,* has recently held the Alabama statute void on this ground. The important issues, we think, are whether the tax imposed in Sec. 901 of Title IX can be termed an excise tax; and whether the federal government by Sec. 903 of Title IX seeks indirectly to control state action in matters resting solely within the powers reserved to the states under Amendment X of the Constitution.

It is not a question of what powers Congress ought to have to meet certain conditions, but what powers are vested in Congress under the Constitution. In determining what they are, we must rereturn to first principles. The care of the unfortunate and the dependent, and the relief of those unable to labor is a burden imposed on the states and until recently has always been so considered. Congress has no power, either directly or indirectly, to invade this province of the states. *Carter* v. *Carter Coal Co., supra,* p. 295; *Schechter Corp.* v. *United States,* 295 U. S. 495, 549.

It is sometimes suggested that, since the states are powerless to solve the problem presented by unemployment in an emergency such as was passed through in the last four years, therefore there must be power in the federal government to meet the situation. A similar suggestion was made in the case of *Kansas* v. *Colorado,* 206 U. S. 46, at page 89:

> All legislative power must be vested in either the state or the National Government; no legislative powers belong to a state government other than those which affect solely the internal affairs of that State; consequently all powers which are national in their scope must be found vested in the Congress of the United States.
>
> But, the court said, the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment.

Again, the Supreme Court very aptly said in *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 151:

> Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words "duties, imposts, and excises", such a tax for more than one hundred years of national existence has as yet

> remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue. *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 557; *Thomas* v. *United States*, 192 U. S. 363, 370.

Again in the case of *Carter* v. *Carter Coal Co.*, *supra*, p. 291, the court said:

> The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to purposes affecting the nation as a whole with which the states severally cannot deal or cannot adequately deal, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have never been accepted but always definitely rejected by this court.

And again on page 292:

> In the Framers Convention, the proposal to confer a general power akin to that just discussed was included in Mr. Randolph's resolutions, the sixth of which, among other things, declared that the National Legislature ought to enjoy the legislative rights vested in Congress by the Confederation, and "moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation." The convention, however, declined to confer upon Congress power in such general terms; instead of which it carefully limited the powers which it thought wise to entrust to Congress by specifying them, thereby denying all others not granted expressly or by necessary implication. It made no grant of authority to Congress to

> legislate substantively for the general welfare, *United States* v. *Butler, supra,* p. 64; and no such authority exists, save as the general welfare may be promoted by the exercise of the powers which are granted.

It is well settled that taxation by Congress is limited to those forms of taxes described in Sec. 8 of Article I of the Constitution, and with respect to these the only limitations are, that a direct tax shall be apportioned between the states and that duties, imposts and excises shall be uniform and be levied only for the purposes named therein.

Is the tax imposed on employers under Sec. 901 of Title IX an excise tax within the meaning of Sec. 8 of Art. I of the federal Constitution? If it is not, it is not a tax that Congress is authorized to levy. No other provisions of the Constitution than Sec. 8 of Art. I give any powers to Congress to levy taxes and the kind of taxes it might levy are expressly defined therein as: direct taxes, duties, imposts, and excise taxes, and these can only be levied to pay the debts and provide for the common defense and general welfare of the United States.

At the time of the adoption of the Constitution the term "excise tax" was used only in connection with a tax on goods, merchandise and commodities.

Blackstone in his Commentaries, 1 Blackstone, p. 308, in speaking of the different forms of taxation, said:

> Directly opposite in its nature to this (direct tax) is the excise duty; which is an inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption.

Adams Smith in 1776 in his "The Wealth of Nations", said:

> The duties of excise are imposed chiefly upon goods of home produce destined for home consumption. They are imposed only upon a few sorts of goods of the more general use. * * * They fall almost altogether upon what I call luxuries.

The tax imposed by the British Act of 1777 and cited by the government in support of its contention, was clearly a luxury tax on male servants. It did not apply to any servant employed for the purpose of husbandry or manufacture, or of any trade or calling by which the employer of such servant earned a profit.

Hamilton in the Federalist, No. 21, speaking of excises describes them as "Taxes on articles of consumption."

Gallatin speaks of an excise tax as an excise on "consumable commodities."

As defined in Bouvier's Law Dictionary, commodity is a broader term than merchandise and "may mean almost any description of articles called movable or personal estate. Labor is not a commodity. 23 L. R. A. 1285."

In the discussions in the several state conventions, both as to the adoption of the federal Constitution and with reference to the adoption of the respective state constitutions, it seems apparent that the understanding of the term "excise tax" was a tax laid upon articles of use or consumption, not according to their value, but an arbitrary amount fixed by the legislature; and the term "commodity" appears to have been used in its ordinary sense as including goods, wares, merchandise, produce of the land and manufacture.

Massachusetts in framing its constitution in 1780, in addition to the ordinary direct taxes, authorized the legislature to impose "reasonable duties and excises upon any produce, goods, wares, merchandise and commodities whatsoever."

Notwithstanding the definition of the word "commodities" found in the dictionaries, the Supreme Court of Massachusetts gave to the word a broader meaning than the lexicographers in the case of *Portland Bank* v. *Apthorp*, 12 Mass. 252, 256:

> This last word [commodities] will perhaps embrace every thing, which may be a subject of taxation, and has been applied by our legislature, from the earliest practice under the constitution, to the privilege of using particular branches of business or employment, as the business of an auctioneer, of an attorney, of a tavern keeper, of a retailer of spirituous liquors, etc.
>
> It must have been under this general term commodity, which signifies convenience, privilege, profit and gains, as well as goods and wares, which are only its vulgar signification, that the legislature assumed the right which has been uniformly and without complaint exercised for thirty years, of exacting a sum of money from attorneys and barristers at law, vendue masters, tavernkeepers, and retailers.

The same construction was expressed in *O'Keeffe* v. *Somerville*, 190 Mass. 110:

> It is not necessary in the present case to determine the meaning of the word "commodities", in reference to every possible application of it, but we are of opinion that it is not broad enough to include every occupation which one may follow, in the ex-

> ercise of a natural right, without aid from the government, and without affecting the rights or interests of others in such a way as properly to call for governmental regulation. Whatever may be done by the Congress of the United States under its general power to levy excise taxes (see *Thomas* v. *United States*, 192 U. S. 363) we are of opinion that, under the limitation to commodities, the General Court of Massachusetts cannot levy an excise tax upon the business of a husbandman or an ordinary mechanic. If this is not the necessary effect of the decision in *Gleason* v. *McKay* [134 Mass. 419] *ubi supra*, it certainly is intimated by the language of the court in the opinion.

While the federal Constitution does not contain the word "commodities" as a basis for levying excise taxes, there appears to be little, if any, difference in the limits imposed upon the interpretation of Sec. 8 of Article I by the Supreme Court of the United States and the interpretation placed on the constitutional provision of Massachusetts by the Massachusetts Supreme Court.

Mr. Justice Story in his work on the Constitution, Sec. 907, 908, says of Sec. 8 of Art. I of the Constitution:

> Before proceeding to consider the nature and extent of the power conferred by this clause, and the reasons on which it is founded, it seems necessary to settle the grammatical construction of the clause, and to ascertain its true reading. Do the words, "to lay and collect taxes, duties, imposts, and excises", constitute a distinct substantial power; and the words, "to pay the debts and provide for the common defence and general welfare of the United States", con-

stitute another distinct and substantial power? Or are the latter words connected with the former so as to constitute a qualification upon them? This has been a topic of political controversy, and has furnished abundant material for popular declamation and alarm. If the former be the true interpretation, then it is obvious that under color of the generality of the words to "provide for the common defence and general welfare", the government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers; if the latter be the true construction, then the power of taxation only is given by the clause, and it is limited to objects of a national character, "to pay the debts and provide for the common defence and the general welfare." § 908. The former opinion has been maintained by some minds of great ingenuity and liberality of views. The latter has been the generally received sense of the nation, and seems supported by reasoning at once solid and impregnable. * * * In this sense, Congress has not an unlimited power of taxation; but it is limited to specific objects—the payment of the public debts, and providing for the common defence and general welfare. A tax, therefore, laid by Congress for neither of these objects, would be unconstitutional, as an excess of its legislative authority.

Excise taxes were defined in *Patton* v. *Brady*, 184 U. S. 608, 617, as:

> An inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption.

And on page 618:

> To determine then what excise means we have for our guidance, first, an enumeration of the articles that it fell on in Great Britain in 1787. We have, second, the nature of the tax as judicially determined; and we have, third, the definition of it, or the common understanding of men about it, as given by the Encyclopedia Brittanica and the Century Dictionary. Taking these three sources of information and combining them, it would seem that the leading idea of excise is that it is a tax, laid without rule or principle, upon consumable articles, upon the process of their manufacture and upon licenses to sell them.

The court in *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 151, adopted the definition of excise taxes found in Cooley on Constitutional Law, 7th ed., page 680:

> Excises are "taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges", which appears to cover the entire ground.

A somewhat broader definition of excise taxes is found in *Thomas* v. *United States*, 192 U. S. 363, 370:

> There is no occasion to attempt to confine the words duties, imposts and excises to the limits of precise definition. We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture and sale of certain commodities, privileges, *particular business transactions, vocations, occupations and the like.* [Italics supplied.]

Sec. 901 of Title IX under consideration declares the tax imposed on all employers to be an excise tax, but as the Supreme Court said in *Flint v. Stone Tracy Co., supra,* page 145: "While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act", although such a declaration may "be entitled to some weight."

It was also held in *Flint* v. *Stone Tracy Co., supra,* that the corporation tax imposed under the Tariff Law of 1909 was valid as an excise tax; but in *Gleason* v. *McKay,* 134 Mass. 419, 424, where the court was considering a tax laid on firms, copartnerships and other associations, it was said:

> It will not be seriously contended that the privileges or rights which are taxed by this statute can be properly described as either produce, goods, wares or merchandise. Do they fairly come within the term "commodities", in the sense in which it is used in the Constitution? Ever since the adoption of the Constitution, the Legislature in its practice, and this court in its adjudications, have given a very broad and extensive meaning to this term. It has been repeatedly held that corporate franchises enjoyed by grant from the government are commodities, and subject to an excise. So with corporate franchises granted by a foreign government, which by comity are permitted to be exercised within this Commonwealth. So where the Legislature has thought, upon consideration of public policy, that certain occupations or callings, of a public or quasi

> public character, should be carried on under governmental regulation, it has been usual to impose a reasonable fee for a license.

The defendant in the above case not being a corporation, but a common law partnership, "it enjoyed no franchise or special privilege conferred upon it by the legislature, but was exercising a common right." Opinion of Justices, 266 Mass. 592–3.

In contrasting these two propositions the Justices in their opinion in 247 Mass. 589, 593, said:

> The right to set up and maintain theatres and other places of public amusement is not natural and inherent. Working by an artisan at his trade, carrying on an ordinary business, or engaging in a common occupation or calling cannot be subjected to a license fee or excise. These are plainly not affected with a public interest, citing *Gleason* v. *McKay, supra; O'Keeffe* v. *Somerville, supra.*

And on page 597:

> The rights to labor and to do ordinary business are natural, essential, and inalienable, partaking of the nature both of personal liberty and of private property.

Cases in which excise taxes have been upheld are: *Hylton* v. *United States,* 3 Dallas 171; *License Cases,* 5 Wall. 462; *Veazie Bank* v. *Fenno,* 8 Wall. 533; *Thomas* v. *United States,* 192 U. S. 363, 370; *Billings* v. *United States,* 232 U. S. 261; *Nicol* v. *Ames,* 173 U. S. 509; *Patton* v. *Brady,* 184 U. S. 608; *McCray* v. *United States,* 195 U. S. 27; *Scholey* v. *Rew,* 23 Wall. 331; *Knowlton* v. *Moore,* 178 U. S. 41; see also *Flint* v. *Stone Tracy Co.,* 220 U. S. 107; *Spreckels Sugar Refining Co.* v. *McClain,* 192 U. S.

397; *Stratton's Independence, Limited,* v. *Howbert,* 231 U. S. 399; *Doyle* v. *Mitchell Brothers Co.,* 247 U. S. 179, 183; *Stanton* v. *Baltic Mining Co.,* 240 U. S. 103, 114.

The *Child Labor Tax Case,* 259 U. S. 20; *Carter* v. *Carter Coal Co.,* 298 U. S. 238; *United States* v. *Butler,* 297 U. S. 1; *Grosjean* v. *American Press Co., Inc., et al.,* 297 U. S. 233; and *Hill* v. *Wallace,* 259 U. S. 44, are cases where so-called excise taxes have been held not to be within the powers vested in Congress as involving matters reserved to the states.

But nowhere do we find that an excise tax has ever been imposed in this country on the natural right to employ labor in manufacturing, or in any trade or calling for profit.

It is urged that the tax imposed under Sec. 901 of Title IX is imposed on the privilege of doing business. If Congress had so intended, we think it would have said so. Sec. 901 does not impose a tax on any business in which any employer may be engaged, nor on the manufacture of any goods, wares, merchandise or commodity, but solely with respect to having in one's employ eight or more employees, the amount of the tax being based on the amount of the total payroll.

One can conceive of a case where a person might have in his employ eight employees during each of twenty days, or part of a day during a taxable year—though not at the same moment of time—but in different calendar weeks, and could not be said to be engaged in any business in so doing. For instance, a physician or a lawyer may decide to construct a house for himself by day labor. In so

doing he cannot be said to be engaged in the *business* of building houses or contracting; but simply doing what every person has a natural right to do in the pursuit of happiness and in the exercise of the liberty guaranteed to him under the Fifth Amendment of the Constitution. He employs common laborers, masons, carpenters, plumbers, electricians, painters, steamfitters, and it may well be that during the construction of his home he might find that he has had for one day, or a part of a day—though not at the same moment of time—during twenty weeks, though not even in consecutive weeks—eight employees at work in constructing his house; and while it cannot be said that his business is that of house building, under Sec. 907 of Title IX he is subject to the tax imposed under Sec. 901.

It is idle to contend that Sec. 901 of Title IX can be separated from the remainder of Title IX and from Title III in considering the purpose of Congress in enacting these Titles, or that the tax on employers is merely an excise tax for the purpose of raising general revenue. It is obvious that Title IX and Title III together were intended to compel the states to impose taxes on all employers except those exempt under Sec. 907 (c), in order to provide unemployment compensation within the states which Congress could not do. The federal government then proceeds under Secs. 902 and 903 of Title IX to retain control over the funds, 90% of which, under Sec. 902, may have been imposed under Sec. 901, and impose the conditions under which they may be distributed in the states.

It is urged that the federal act and any state act are entirely independent of each other, but in

the light of the alleged coordinating features of the Act of Congress and the requirements imposed on the state in order to obtain funds for the unemployed in each state, the court cannot shut its eyes to the compelling and regulatory features of the Congressional act. *Child Labor Tax Case, supra,* p. 37.

> "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." Every journey to a forbidden end begins with the first step; and the danger of such a step by the federal government in the direction of taking over the powers of the states is that the end of the journey may find the states so despoiled of their powers, or—what may amount to the same thing—so relieved of the responsibilities which possession of the powers necessarily enjoins, *as to reduce them to little more than geographical subdivisions of the national domain.* It is safe to say that if, when the Constitution was under consideration, it had been thought that any such danger lurked behind its plain words, it would never have been ratified. [Italics supplied.] *Carter v. Carter Coal Co., supra,* p. 295.

It is said that a state is not obliged to pass an unemployment act, and many states have not done so. Neither were employers obliged to comply with the Child Labor Law—they could have paid the tax or penalty—or farmers to reduce their acreage in accordance with the provisions of the Agricultural Adjustment Act—they could have refused the aid—but the consequences of failure to do so were such that they could not afford to do otherwise. So in this case, if a state does not pass an unemployment compensation act complying

with the requirement of Congress, or of the proper federal bureau the entire tax assessed on employers under Sec. 901 goes into the United States treasury. Such a state must itself bear whatever financial burdens result to it from unemployment in its industries. No payments for unemployment assistance are made from the federal treasury. A state may not comply at once, but if the Act is held valid the distadvantages resulting to the state and its employers and the consequent dissatisfaction of its employees, it is quite obvious, will sooner or later compel all the states to enact such legislation, and in such form as well receive the approval of the Social Security Board created by the Act. That this amounts to coercion of the states and control by Congress of a matter clearly within the province of the states cannot be denied. If valid, it marks the end of responsible state government in any field in which the United States chooses to take control by the use of its taxing power. If the United States can take control of unemployment insurance and old age assistance by the coercive use of taxation, it can equally take control of education and local health conditions by levying a heavy tax and remitting it in the states which conform their educational system or their health laws to the dictates of a Federal Board. It is a significant fact that many of the Acts in the states provide that the state law shall not remain in effect if Title IX is declared unconstitutional, which indicates beyond a doubt that the states in self-defense consider themselves compelled by the Act of Congress to enact a state law. It is plainly the duty of the courts to uphold and support the present

Constitution until it has been changed in the legal way.

While courts will not declare Acts of Congress of no effect because some other motive outside the powers of Congress may have actuated Congress in passing it, though not shown on the face of the Act, the provisions of an Act of Congress must be reasonably adapted to some purpose within the powers vested in Congress and not with a view to accomplishing some other purpose wholly reserved to the states. *Linder* v. *United States,* 268 U. S. 5, 17.

As to the wisdom, as a social aim, of providing for the unfortunate, the dependent, or those permanently or temporarily unable to earn a livelihood, we are in sympathy; but even though we may think an Act of Congress embodies a commendable social plan and are in sympathy with its purpose and intended results, if its provisions go beyond the limits of federal power and extend into the field of power reserved to the states, we must so declare. *Railroad Retirement Board* v. *Alton R. R. Co.,* 295 U. S. 330, 347.

However general such social needs may be in the states as sovereign units, they are not necessarily a part of the general welfare of the United States, *Schechter Corp* v. *United States, supra; Railroad Retirement Board* v. *Alton R. R. Co., supra; Carter* v. *Carter Coal Co., supra,* p. 290–1. If the dual form of our government is to be maintained as conceived by the framers of the federal Constitution, the general welfare of some or even of all the states *in matters reserved to the states,* when taken together, cannot be held to constitute the general

welfare of the United States within the meaning of Sec. 8 of Art. I of the Constitution.

Therefore, to provide unemployment benefits regardless of need, to persons who have worked in local employments in local trade and manufacturing within a state, not related to interstate commerce, or in any calling not related to the matters subject to the control of the Congress, is not to provide for the general welfare of the United States.

There is no warrant for taking the property or money of an employer and transferring it to his employees without compensation, not even by taxation, *Loan Association* v. *Topeka,* 20 Wall. 655, whether the purpose is a commendable one or not. Title IX, coupled with Title III, is an attempt by Congress to impose a tax on employers of eight or more as a means of assuring certain employees, deprived of employment for any reason, of a certain amount of compensation during their period of unemployment, and to regulate the conditions under which such employees shall be entitled to aid.

> A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government. The word has never been thought to connote the expropriation of money from one group for the benefit of another. * * * The exaction cannot be rested out of its setting, denominated an excise for raising revenue and legalized by ignoring its purpose as a mere instrumentality for bringing about a desired end. To do this would be to shut our eyes to what all others than we can see and understand. *United States* v. *Butler, supra,* p. 61.

If the Act is carried out as planned by Congress, and a tax is imposed on every employer which is credited against a tax imposed by the state, and, under the conditions imposed by Sec. 302 and 303 of Title III and Sec. 903 of Title IX, is paid to employees found to be eligible, it amounts, in effect, to taking the property of every employer for the benefit of a certain class of employees. The entire plan, viewed as a whole, is an attempt to do indirectly what Congress cannot do directly, and to assume national control over a subject clearly within the jurisdiction of the states.

Congress by the provisions of Sec. 903 not only takes charge of the funds raised by the states, but has undertaken to dictate the terms of state legislation in relation to the conditions under which a person is entitled to receive unemployment compensation under a state act.

The federal government has no power, granted or inherent, in respect to the internal affairs of the states. *Carter* v. *Carter Coal Co., supra,* p. 295. It has no right to say to the several states that, in order to obtain aid for the unemployed in its industries, they must enact statutes which shall provide that—

(1) All unemployment compensation must be paid through public employment offices in the State or such other agencies as a federal Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the "unemployment fund" (from State taxes) shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by Sec. 904 of Title IX;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Instances are cited of appropriations by Congress for the aid of states in caring for relief of its citizens and in aid of those unable to earn a livelihood, for flood relief in the states, for relief from drought in certain agricultural states, or to relieve losses from earthquakes, here or abroad, or from disastrous fires, and particularly to aid or relieve suffering in other countries, but no special tax was imposed for these. Here the national government is undertaking to impose its will on the several states in regard to one of the oldest and most universal problems in human life: the care of children, of old people, and in aid of the unemployed. In

this country it has always been done locally or by the states. Numerous cases can be cited of appropriations made for purposes not within the connotation of the term "general welfare of the United States", but they have never been questioned, and there is no process to prevent an appropriation for such purposes by Congress, as was decided in *Massachusetts* v. *Mellon,* and *Frothingham* v. *Mellon,* 262 U. S. 447, 486, 487, and in *Florida* v. *Mellon,* 273 U. S. 12, 18; *United States* v. *Butler, supra,* p. 73. The remedy, if one is necessary, is with the people who select their representatives.

President Cleveland, in 1887, vetoed an attempted act of Congress to aid counties in Texas injured by drought, saying in his veto message:

> I can find no warrant for such an appropriation in the Constitution. The lesson should be constantly enforced that, though the people should support the government, the government should not support the people.

A unanimous court in *Schechter Corp.* v. *United States, supra,* p. 549, said that

> The Government also makes the point that efforts to enact state legislation establishing high labor standards have been impeded by the belief that unless similar action is taken generally, commerce will be diverted from the States adopting such standards, and that this fear of diversion has led to demands for federal legislation on the subject of wages and hours. The apparent implication is that the federal authority under the commerce clause should be deemed to extend to the establishment of rules to govern wages and hours in intrastate trade and industry generally throughout the coun-

> try, thus overriding the authority of the States to deal with domestic problems arising from labor conditions in their internal commerce.
>
> It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it.

As stated above, the issue is not what powers Congress ought to have to meet conditions as viewed by the executive and legislative branches of the government, but what powers are vested in Congress under the Constitution. The Supreme Court through a long series of opinions has defined those powers and the limitations upon them. If the Constitution, as construed through the years, requires amendments to meet new conditions, the way is provided therein.

While state courts have in passing on state unemployment acts held them not to be violative of the constitutional provisions of their respective states, as the Massachusetts Supreme Court in the case of *Howe Brothers Company* v. *Unemployment Compensation Commission* has recently decided, it is significant that it did not sustain the taxation provisions of the Massachusetts Unemployment Act as imposing excise taxes, but as an exercise of its police powers, and provided that the state law should not be valid in case the federal act was held to be beyond the constitutional powers of Congress—indicating, we think, that the state acted under coercion.

It seems to be generally agreed the regulation of employment in the states is a matter solely within their jurisdiction. This, we understand, was the

basis of the court's decision in the recent minimum wage law of the State of Washington for women; and only in matters where Congress has control, as in interstate commerce or in the District of Columbia may Congress regulate the wages and hours of labor.

In a case recently decided by the Supreme Court of Canada, Canada Law Reports, 1936, Part VII, page 454, approved by the British Privy Council, an act of the Dominion Parliament, relating to social insurance, was held to invade the field exclusively reserved by the constitution to the legislatures of each province; and in the case of *James* v. *Commonwealth of Australia,* 1936, A. C. 578, in which an act of the Commonwealth of Australia was under consideration to control and limit the products of agriculture, it was held unconstitutional by the British Privy Council. Lord Wright, Master of the Rolls, page 633, in holding the act unconstitutional, said:

> But these inconveniences are liable to flow from a written constitution. Their Lordships cannot arrive at any conclusion save that they could not give effect to the respondents' contention consistent with any construction of the constitution which is in accord with sound principles of interpretation. To give that effect would amount to rewriting, not construing, the constitution. That is not their Lordships' function.

While we accept certain of the premises laid down by the court in the cases of *Beeland Wholesale Company* v. *Harwell G. Davis, Collector of Internal Revenue,* and Charles C. Steward Machine Company, recently decided in the fifth circuit, we are unable to adopt its conclusions as to the validity

of Title IX of the federal act. The case of *Gillum v. Johnson et al.*, decided by the Supreme Court of California, can hardly be said to have considered, except by way of dicta, the issues raised in the case at bar.

The decree of the District Court is reversed with costs, and the case is remanded to that court for further proceedings in accordance with this opinion.

BINGHAM, *Circuit Judge* (dissenting). This is an appeal from a decree of the District Court for Massachusetts dismissing the plaintiff's bill of complaint. The bill, filed November 6, 1936, was brought by George P. Davis, a citizen of Massachusetts, against the Boston & Maine Railroad, a Massachusetts corporation, praying that the defendant be enjoined from making payments to the Collector of Internal Revenue of the tax imposed upon it under Title IX of the Act of Congress of August 14, 1935, c. 531 (49 Stat. 620, U. S. C. Title 42, c. 7), and that Title IX of that Act be held not to be an Act of Congress within its powers under the Constitution of the United States. In the bill it is alleged, and it is conceded, that the plaintiff is a stockholder, owning an unspecified number of shares of stock of the defendant corporation; that the defendant is now, and was during the year 1936, engaged in the business of operating a railroad in Massachusetts, and during that time employed more than eight persons therein; that under section 901 of that Act it is required to pay each calendar year after January 1, 1936, an excise tax; and that the corporation, though requested not to do so,

nevertheless had decided to make payments under the Act.

It further appears that on November 12, 1936, Guy T. Helvering, Commissioner of Internal Revenue, and William M. Welch, Collector of Internal Revenue for the District of Massachusetts, sought and were permitted to intervene as defendants; that on November 17, 1936, the plaintiff, the defendant, and the intervenors filed a stipulation in which it was provided that—

> The only issue involved in this case, either directly or indirectly, is whether or not Title IX of Chapter 531 of August 14, 1935, 49 Stat. 620, is an act of Congress within its powers under the Constitution of the United States, or is violative of the Fifth Amendment thereof, and *the only way that that issue is raised is in respect to payments under that Title IX.*

It appears, therefore, that the single question is whether Title IX of the Act is constitutional insofar as it requires the defendant corporation to make payments of taxes into the Treasury of the United States.

Title IX, the essential provisions of which appear in the foot-note of the opinion of the court, is entitled "Tax on Employers of Eight or More", and section 901, which imposes the tax, reads as follows:

> Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined

in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year.

For the calendar year 1936, the rate is fixed at 1 per centum; for the calendar year 1937, 2 per centum; and after December 31, 1937, 3 per centum.

By section 907, the term "employer" as used in section 901, means any person (individual or otherwise, Sec. 1101 (3) (4)) employing eight or more persons during the taxable year for the length of time there specified; that the term "wages" means cash or cash value of all remuneration paid employees for services rendered; and that the term "employment" means any service *performed within the United States* by an employee for his employer, except agricultural labor, domestic service in a private home, services of an officer or member of a crew of a vessel on navigable waters of the United States, services of a father in the employ of his son, daughter or wife, or of a child under twenty-one for his father or mother; services performed in the employ of the United States or one of its instrumentalities; or in the employ of a State, or political subdivision thereof, or of a State instrumantality; for services performed for a corporation or organization organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, *no part of the net earnings of which enures to the benefit of any private shareholder or individual.*

It is apparent from a reading of these sections that the subject or activity upon which the tax is

imposed for a given calendar year, is a person, firm, or corporation, except those above stated, doing business within the United States in which eight or more individuals are employed; that the object of the tax is the act of the employer in having individuals in his employ; and that the tax is at a fixed rate measured by the total wages paid by the employer to those employed. It is also reasonably certain that the business of the employer, the subject of the tax, is one carried on for profit and not one where no pecuniary benefit accrues to a private shareholder or to an individual. The tax is spoken of in the Act as an excise tax.

The plaintiff contends that this is not an excise tax. At one time he argues that no tax is an excise tax except a tax upon property and then later concedes that such a tax may be one imposed on one's profession or calling, upon the manufacture, sale, use, or consumption of an article; but that it cannot be upon the doing of business or the doing it in a particular mode or form, or upon the act, not the privilege, of carrying on a business employing eight or more employees. He asserts that the tax in question is upon wages—an outgo—and that no one ever heard of a tax upon outgo. He fails to recognize that the tax is not upon the wages, that the wages paid out are merely the measure of the tax, and that the Supreme Court has expressly held that the act of making a gift *inter vivos*—outgo—may be made the basis of an excise tax upon the donor, measured by the value of the property given (*Bromley* v. *McCaughn,* 280 U. S. 124), or upon the act of using a boat, not the privilege of doing so. *Billings* v. *United States,* 232 U. S. 261 at 281. We may therefore reasonably rest assured

that because the tax in question is measured by the wages, *the property paid out,* that it will not for that reason fail of having been properly laid; nor for the reason that the act of the employer in carrying on a business employing eight or more individuals, not the natural right or privilege of doing so, is made the occasion of the tax.

It is certain that, prior to the adoption of the Sixteenth Amendment, a tax based on the ownership of property, real or personal, and the income derived from either, was a direct tax, and had to be laid according to the rule of apportionment; and that since then a tax upon income, derived from either source, is subject only to being uniform throughout the United States.

The tax here in question is manifestly not a direct tax upon property, and if it is an indirect tax, an excise, the only constitutional limitation is that it be uniform. Article 1, section 8, clause 1. It is there provided that "All duties, imposts and excises shall be uniform throughout the United States."

It is also fairly certain that the Supreme Court has held that a tax upon an incidence of ownership of property, which does not amount in fact to a direct tax upon the property itself, may be an excise. It was held, as above said, that a tax on the act of using a boat, an incidence of ownership, even though the use made of it be in foreign waters by a citizen of the United States, permanently domiciled abroad, is an excise within section 8 of Article 1. *Billings* v. *United States,* 232 U. S. 261. It reached the same conclusion in regard to a tax on carriages which the owner "kept for his own use"—the act of so keeping. *Hylton* v. *United*

States, 3 Dal. 171. In that case, Chase, Justice, after expressing the view that the power granted to Congress to lay duties, imposts, and excises, was the most comprehensive of the powers granted to Congress to lay taxes, other than the one embraced in the "general term tax", said:

> It seems to me, that a tax on *expense* is an indirect tax; and I think an annual tax on a carriage for the conveyance of persons is of that kind; because a carriage is a consumable commodity; and such annual tax on it is on the *expense* of the owner.

In *Veazie Bank* v. *Fenno,* 8 Wall. 533, 539, the court had under consideration an Act of Congress providing that:

> Every National banking association, State bank, or State banking association, shall pay a tax of ten per centum on the amount of notes of any person, State bank, or State banking association *used for circulation,* and *paid out* by them after the first day of August 1866, * * *.

It will be seen that this Act imposed a tax upon the act of paying out the notes of any person, State bank or State banking association used for circulation; that it was not a tax upon the notes, but upon the use made of them—the act of paying them out, an incidence of ownership.

In that case it was first contended that the tax was a direct tax, and second, that it was a tax on a franchise granted by the State. It was held not to be a direct tax or a tax on a franchise granted by a state, but was a tax upon the issuance of bank bills under the franchise of the bank; that it stood no differently than a tax upon bills of lading *issued*

by a railroad company, in the exercise of its corporate franchise for freight received, which were "proper objects of taxation within the power of Congress, and not exempt by any relation to the State which granted the charter of the railroad." And in answer to the contention that the tax was "excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank", the court replied:

> that the judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution.

Like excise taxes imposed upon an incidence of ownership, such as the act of selling liquor or of selling lottery tickets (*License Tax Cases*, 5 Wall. 462; *So. Carolina* v. *United States*, 199 U. S. 437; *Ohio* v. *Helvering*, 292 U. S. 360; *United States* v. *Yuginovich*, 256 U. S. 450); the manufacture, sale or removal for sale of articles (*United States* v. *American Chicle Co.*, 256 U. S. 446; *Patton* v. *Brady*, 184 U. S. 608); the sale or transfer of securities (*Provost* v. *United States*, 269 U. S. 443; *Thomas* v. *United States*, 192 U. S. 363; *Treat* v. *White*, 181 U. S. 264); the manufacture and sale of oleomargarine (*McCray* v. *United States*, 195 U. S. 27); on successions or receipt of property at

death (*Scholey* v. *Rew*, Wall. 331; *Knowlton* v. *Moore*, 178 U. S. 41; *New York Trust Co.* v. *Eisner*, 256 U. S. 345); and on the act of making a gift *inter vivos*, as above stated in *Bromley* v. *McCaughn*, 280 U. S. 124.

As taxes laid on such acts have been uniformly sustained as excise taxes under the power of Congress to levy duties, imposts and excises, it remains to be considered whether it is within the power of Congress to levy such a tax upon the act of doing business, or doing business in a particular manner or form, or on a particular act done in carrying on a business.

In *Thomas* v. *United States*, 192 U. S. 363, the appellant had been indicted for violation of the internal revenue laws of the United States in that, being a broker (doing a brokerage business), he had sold certain shares of stock and omitted affixing the required revenue stamps upon the memorandum of sale. He was found guilty, and a judgment sentencing him to pay a fine of $500 having been entered, sued out a writ of error. He contended that the right of sale and transfer was a natural or inherent attribute of property or ownership; and that such a natural right could not be made the occasion of a tax. The government contended that it was not a direct tax, but one "in the nature of a duty or excise upon transactions in business activity or forms of commercial dealing"; that "Congress has the power to declare that any person who shall engage in the business or occupation of *buying* or *selling* certificates of stock shall pay a tax measured by the price real-

ized." Chief Justice Fuller in delivering the opinion of the court, said:

> The present case involves a stamp tax on a memorandum or contract of sale of a certificate of stock, which plaintiff in error claims was unlawfully exacted because not falling within the class of duties, imposts and excises, and being, on the contrary, a direct tax on property.
>
> There is no occasion to attempt to confine the words "duties, imposts and excises" to the limits of precise definition. We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, *particular business transactions,* vocations, occupations, and the like.
>
> Taxes of this sort have been repeatedly sustained by this court, and distinguished from direct taxes under the Constitution. As in *Hylton* v. *United States,* 3 Dallas 171, on the use of carriages; in *Nicol* v. *Ames,* 173 U. S. 509, on sales at exchanges or boards of trade; in *Knowlton* v. *Moore,* 178 U. S. 41, on the transmission of property from the dead to the living; in *Treat* v. *White,* 181 U. S. 264, on agreements to sell shares of stock denominated "calls" by the New York stock brokers; in *Patton* v. *Brady,* 184 U. S. 608, on tobacco manufactured for consumption. [Italics supplied.]

And in affirming the judgment of the lower court, he stated: "The stamp duty is contingent on the happening of the *event of a sale.*" A particular act in the conduct of the business of a broker. And in conclusion said: "As such, it falls * * * within the second class of the forms of taxation."

In *Spreckels Sugar Refining Co.* v. *McClain,* 192 U. S. 397, the plaintiff below was a Pennsylvania corporation incorporated for the purpose of "refining sugar, which will involve the buying of the raw material therefor, and selling the manufactured products, and doing whatever else should be incidental to the said business of refining." It sought to recover certain sums paid by it under protest to the defendant-collector, as unlawfully exacted under the twenty-seventh section of the Act of June 13, 1898. That Act imposed a tax upon every person, firm, corporation or company carrying on or doing the business of refining sugar, measured by the gross annual receipts in excess of a named sum. It reads as follows:

> SEC. 27. That every person, firm, corporation, or company carrying on or doing the business of *refining petroleum,* or *refining sugar,* or owning or controlling any pipe line for transporting oil or other products, whose *gross annual* receipts exceed $250,000, shall be subject to pay annually a special excise tax equivalent to one-quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of $250,000.

Here, again, the appellant contended that the tax was a direct tax. The government's contention was that it was an excise and plainly indirect; that it made "no difference how the manufacturing activities *are measured* in the imposition of the tax."

It is apparent from a reading of the section that the tax is not based on the doing of business *in corporate form,* for it is imposed upon a person or firm, as well as upon a corporation. It was limited,

however, to the doing of business in a particular way, the refining of petroleum or refining of sugar. In holding the tax to be an excise the court said (p. 411):

> Clearly the tax is *not imposed upon gross annual receipts* as *property*, but only in respect of the carrying on or doing the business *of refining sugar*. It cannot be otherwise regarded because of the fact that the amount of the tax *is measured* by the amount of the gross annual receipts. The tax is defined in the Act as "a special excise tax", and, therefore, it must be assumed, for what it is worth, that Congress had no purpose to exceed its powers under the Constitution, but only to exercise authority granted to it of laying and collecting excises. [Italics supplied.]

It did not trouble the court in that case that the tax was imposed only on those whose "gross annual receipts exceeded $250,000, and not on other persons, firms or corporations, whose gross annual receipts were less, and who were consequently exempted from payment of the tax. And after reviewing many decided cases bearing on the question the court concluded (pp. 412–13):

> We cannot hold that the tax imposed on the plaintiff expressly with reference to its "carrying on or doing the business of * * * refining sugar", and which was to be measured by its gross annual receipts in excess of a named sum, is other than is described in the Act of Congress, a special excise tax, and not a direct one to be apportioned among the States according to their respective numbers. This conclusion is inevitable from the judgments in prior cases, in which the court has dealt with distinctions,

> often very difficult to be expressed in words, between taxes that are direct and those which are to be regarded simply as excises. The grounds upon which those judgments were rested need not be restated or re-examined. It would subserve no useful purpose to do so. It must suffice now to say that they clearly negative the idea that the tax here involved is a direct one, to be apportioned among the States according to numbers.

In *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, the question arose under section 38 of the Act of Congress of 1909 (36 Stat. 112), which reads:

> SEC. 38. That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any state or territory of the United States or under the Acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States, or in Alaska or in the District of Columbia, shall *be subject to pay annually a special excise tax* with respect to the *carrying on or doing business by such corporation,* joint stock company or association or insurance company, equivalent to one per centum upon the entire net income over and above $5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over

and above $5,000 received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided, however,* That nothing in this section contained shall apply to *labor, agricultural or horticultural organizations,* or to *fraternal beneficiary societies,* orders, or associations operated under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to *domestic building and loan* associations, organized and operated exclusively for the mutual benefit of their members, nor *to any corporation or association organized and operated exclusively for religious,* charitable, or educational purposes, no *part of the net income* of which enures to the *benefit of any private stockholder or individual.* [Italics supplied.]

The second paragraph of this section sets forth what deductions may be made from the gross amount of income to ascertain the net income by which the tax is to be measured.

The third paragraph provides for the deduction of the sum of $5,000 from the net income as determined under the second paragraph, and that the tax shall be computed upon the remainder of such net income for the year ending December 31, 1909, and for each calendar year thereafter, and requires the taxpayer to make a return on or before the first day of March 1910, for the tax of

1909, and a like return on the first day of March in each year thereafter.

Here again individuals and partnerships were exempted from paying the tax, as it was not imposed on them. (See pp. 140–141.)

In construing section 38 for the purpose of ascertaining its meaning, the court said (p. 144):

> A reading of this portion of the statute shows the purpose and design of Congress in its enactment and the subject-matter of its operation. It is at once apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares. Such joint stock companies, while differing somewhat from corporations, have many of their attributes and enjoy many of their privileges. * * * The tax is to be equivalent to one per cent of the entire net income over and above $5,000 received by such corporation or company *from all sources* during the year, excluding, however, amounts received by them as dividends upon stock of other corporations * * * subject to the tax imposed by the statute. * * *
>
> While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, nevertheless, the declaration of the law-making power is entitled to much weight, and in this statute the intention is expressly declared to impose a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company. It is therefore appar-

> ent, giving all the words of the statute effect, that the tax is *imposed not upon the franchises of the corporation* irrespective of *their use* in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business and with respect to the carrying on thereof, in a sum equivalent to one per centum upon the entire net income over and above $5,000 received from all sources during the year; *that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organizations of the character described.* As the latter organizations share many benefits of corporate organizations, it may be described generally as a tax upon the doing of business in a corporate capacity. * * * In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deductions stated, received not only from property used in business, but from every source. * * * This interpretation of the act, as resting upon the *doing of business,* is sustained by the reasoning in *Spreckels Sugar Refining Co.* v. *McClain,* 192 U. S. 379, in which a special tax measured by the gross receipts of the *business of refining oil and sugar* was sustained as an excise in respect to the carrying on or doing of *such business.* [Italics supplied.]

Having ascertained the intention of Congress as expressed in the statute, the court proceeded to consider whether the statute so construed was constitutional, and said:

> It is contended that it is not, certainly so far as the tax is measured by the income of

> bonds non taxable under Federal statutes, and of municipal and State bonds beyond the Federal power of taxation. And so of real and personal estates, because as to such estates the tax is direct, and required to be apportioned according to the population among the States.

After recounting the provisions of the Constitution relating to the laying of taxes, and restating what was held in the *Pollock* case and in *Knowlton* v. *Moore* bearing upon this contention, the court said:

> The Act now under consideration does not impose direct taxation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under Art I, sec. 8, cl. 1 of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States.
>
> Within the category of *indirect taxation,* as we shall have further occasion to show, is embraced a tax upon business done in a corporate capacity, which is the subject-matter of the tax imposed in the Act under consideration. The *Pollock case* construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case the tax is not payable unless there be a carrying on or doing of business *in the designated capacity,* and this is made the *occasion* for the tax, measured by the standard prescribed. The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way. * * * The tax under

> consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity, *i. e.*, with the advantages which arise from corporate or quasi-corporate organization. * * * [Italics supplied.]

In discussing the contention that the attempted taxation was void because it taxed franchises which were the creation of the State in its sovereign right and authority, the court said:

> The inquiry in this connection is: How far do the implied limitations upon the taxing power of the United States over objects which would otherwise be legitimate subjects of Federal taxation, withdraw them from the reach of the Federal Government in raising revenue, because they are pursued under franchises which are the creation of the States?
>
> In approaching this subject we must remember that enactments levying taxes, as other laws of the Federal Government when acting within constitutional authority, are the supreme law of the land. The Constitution contains only two limitations on the right of Congress to levy excise taxes; they must be levied for the public welfare and are required to be uniform throughout the United States. As Mr. Chief Justice Chase said, speaking for the court in *License Tax Cases,* 5 Wall. 462, 471: "Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited and thus only, it reaches every subject and may be exercised at discretion." The limitations to which the Chief Justice refers were the only ones imposed in the Constitution upon the taxing power.

The court then took up the inquiry "as to implied limitations upon the exercise of Federal authority to tax because of the sovereignty of the States over matters within their exclusive jurisdiction, having in view the nature and extent of the power specifically conferred upon Congress by the Constitution of the United States." It said:

> We must remember, too, that the revenues of the United States must be obtained in the same territory, from the same people, and excise taxes must be collected from the same activities, as are also reached by the States in order to support their local government.

And after restating his construction of the statute,—that the tax imposed by the Act was upon activities connected with doing business in a corporate capacity, activities which arise from and out of the exercise of franchises granted by the State, the court held:

> We think it is the result of the cases heretofore decided in this court, that such business activities, though exercised because of state-created franchises, are not beyond the taxing power of the United States. * * * When the Constitution was framed the right to lay excise taxes was broadly conferred upon the Congress. At that time very few corporations existed. If the mere fact of state incorporation, extending now to nearly all branches of trade and industry, could withdraw the legitimate objects of Federal taxation from the exercise of the power conferred, the result would be to exclude the National Government from many objects upon which *indirect taxes* could be constitutionally imposed.

It then considered the case of *South Carolina* v. *United States,* 199 U. S. 437, 461, where it was held that the agents of the State government, carrying on the business of selling liquor under State authority, were liable to pay the internal revenue tax imposed by the Federal government and said that the rule to be deduced from that and previous cases was "that the exemption of state agencies and instrumentalities from national taxation was limited to those of a strictly governmental character, and did not extend to those used by the State in carrying on business of a private character"; and that, while Federal taxation did not extend to "the means and instrumentalities employed in carrying on the governmental operations of the State," this "limitation has never been extended to the exclusion of the activities of a merely private business from the Federal taxing power, although the power to exercise them is derived from an act of incorporation by one of the States."

It then considered the question of whether "this taxation is so unequal and arbitrary in the fact that it taxes a business when carried on by a *corporation* and *exempts* a similar business when carried on by a *partnership* or *private individual* as to place it beyond the authority conferred upon Congress." It pointed out that the limitation of uniformity in laying the tax did "not require the equal application of the tax to all *persons* or *corporations* who may come within its operation, but is limited to geographical uniformity throughout the United States" and held:

> In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other pos-

> sible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another.

And in support of the proposition, refers to many cases cited in the margin.

Later the court considered the question whether the *measure* of the tax by the net income of a corporation or company received by it *from all sources* was so arbitrary and baseless as to fall outside the authority of the taxing power. As to this it said (pp. 165–167):

> The tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations. Some corporations do a large business upon a small amount of capital; others with a small business may have a large capital. * * * There is no rule which permits a court to say that the measure of a tax for the privilege of doing business, where income from property is the basis, must be limited to that derived from property which may be strictly said to be accurately used in the business. Departures from that rule sustained in this court are not wanting. In *United States* v *Singer*, 15 Wall. 111, an excise tax was sustained upon the liquor business, which was fixed by the payment on an amount not less than 80 per cent of the total capacity of the distillery. Whether such capacity was used in the business was a matter of indifference, and this court said of such a measure: "Everyone is advised in advance of the amount he will be required to pay if he enters into the business of distilling spirits, and every distiller must know the producing capacity of his distillery. If he fail under these circumstances to produce the amount

> for which by the law he will in any event be taxed if he undertakes to distill at all, he is not entitled to much consideration." * * * We must not forget that the *right to select the measure* and *objects of taxation* devolves upon the Congress and not upon the courts, and such selections are valid unless constitutional limitations are overstepped. "It is no part of the function of a court to inquire into the reasonableness of the excise, either as respects the amount or the property upon which it is imposed."

It seems to me that the foregoing decisions demonstrate that the act of doing business, or of doing business in a particular way or form, may be selected by Congress as a proper object for laying an excise tax; and that the act of employing individuals in a business or occupation may likewise be a proper object for an excise tax. And it also seems to me that an excise tax, in the instances mentioned, may properly be measured by the gross or net income of the business, or by the gross or net income from all sources, or by outgo; or by any other standard having relation to the object of the tax and by which the tax may reasonably be measured, as was done in the *Singer* case, where the excise upon the business of distilling liquor was measured by an amount not less than 80 per centum of the total capacity of the distillery, whether that capacity was availed of or not.

The decisions of the Massachusetts Court, construing the term "commodity" in the constitution of that State and relied upon in the opinion of the court in this case, furnish no aid in the construction of Art. 1, Sec. 8, cl. 1, of the Federal Constitution and the determination of the requisites of an excise tax thereunder, for the word "commodity",

as respects an occupation or business, is construed as limited to an occupation of business receiving governmental aid, or to such a one "as to properly call for governmental regulation." No such limitation has been placed by the Supreme Court on Art. 1, Sec. 8, cl. 1. See the *Spreckels case, supra.*

While the power of Congress to select the occasion or object of the tax and the method of measurement is discretionary, its power to select the *subjects* of taxation are apparently limited by the Constitution. Under its requirements Congress cannot select as the subject of taxation the activities of a State, or its instrumentalities, of a governmental nature, but unquestionably has the right to select the business of an individual or a firm, or a corporate organization; and Congress in the selection of the subjects of taxation under Title IX did not exceed its power, for it expressly excluded the business activities of a State and its instrumentalities, whether of a private or governmental character; and it seems to be generally conceded that when Congress, in the laying of a tax, has acted within its constitutional authority in the selection of a given subject of taxation, "the taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument"—apportionment in the case of a direct tax, and uniformity for an indirect one; and that if a tax be within its lawful power, the exercise of that power may not be judicially restrained because it may indirectly affect a power reserved to the States and tend to regulate or suppress a local activity, as in *McCray* v. *United States,* 195 U. S. 27, where it indirectly tended to regulate and suppress a local

activity—the manufacture of colored oleomargarine—a matter of State control; or as in *Knowlton* v. *Moore,* 178 U. S. 41, the transmission or receipt of property on the occasion of death—the right to regulate which is likewise within the exclusive control of a State.

In the former case it was said (p. 60):

> This principle is pertinent only when there is no power to tax a *particular subject,* and has no relation to a case where such right exists. In other words, the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to *subjects* which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it had there would be an end of all taxation; that it to say, if a lawful tax can be defeated because the power which is manifested by its imposition may when further exercised be destructive, it would follow that every lawful tax would become unlawful, and therefore no taxation whatever could be levied.

(See also *Nigro* v. *United States,* 276 U. S. 332, where a lawful tax which tended indirectly to effect a regulation of a reserved power of a State, was upheld.)

And in the *McCray* case (pp. 58–59) it was held that where the activity selected by Congress for taxation was a lawful subject, its power to tax was unlimited and its motive or purpose (to suppress or regulate) could not be inquired into by the courts.

As to the power of the courts in this respect, the court said (p. 55):

> It is of course, true, as suggested, that if there be no authority in the judiciary to restrain a lawful exercise of power by another department of the government, where a wrong motive or purpose has impelled to the exertion of the power, that abuses of a power conferred may be *temporarily effectual.* The remedy for this, however, lies, not in the abuse by the judicial authority of its functions but in the people, upon whom, after all, under our institutions, reliance must be placed for the *correction of abuses committed in the exercise of a lawful power.* [Italics supplied.]

And, in the same connection, it was said (pp. 54–55) that the contention "that, because a particular department of the government may exert its lawful powers with the *object or motive* of reaching an end not justified, therefore it becomes the duty of the judiciary to restrain the exercise of a lawful power wherever it seems to the judicial mind that such lawful power has been abused . . . reduces itself to the contention that, under our constitutional system, the abuse by one department of the government of its lawful powers is to be corrected by the abuse of its powers by another department", that "the proposition, if sustained, would destroy all distinction between the powers of the respective departments of the government, would put an end to that confidence and respect for each other which was the purpose of the Constitution to uphold, and would thus be full of danger to the permanence of our institutions."

In considering the effect of the due process clause of the Fifth Amendment upon a lawful exercise of the taxing power, though indirectly tending to regulate or suppress a local activity, the court said:

> That provision, as we have previously said, does not withdraw or expressly limit the grant of power to tax conferred upon Congress by the Constitution. From this it follows, as we have also previously declared, that the judiciary is without authority to avoid an act of Congress exerting the taxing power, even in a case where to the judicial mind it seems that Congress had in putting such power in motion abused its lawful authority by levying a tax which was unwise or oppressive, or the result of the enforcement of which might be to *indirectly affect subjects not within the powers delegated to Congress.*

It is certain that the uniformity clause is complied with. That clause exacts only a geographical uniformity, and there is no semblance of ground for claiming a violation of that requirement. *Knowlton* v. *Moore,* 178 U. S. 41; *Patton* v. *Brady,* 184 U. S. 608, 622; *Billings* v. *United States,* 232 U. S. 261, 281; *Brushaber* v. *Union Pacific R. R.,* 240 U. S. 1, 24.

The Acts of Congress imposing an excise tax on the business activities of corporations, but exempting like business activities of a *partnership* or *private individual,* have been held within the authority of Congress. *Flint* v. *Stone Tracy Co.,* 220 U. S. at p. 158. It is there said:

> In levying excise taxes, the most ample authority has been recognized from the beginning to select some and omit other pos-

> sible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another.

(See pages 140–141 of that case.)

I do not think that Congress rendered its exercise of the taxing power illegal by reason of the exemptions stated in Title IX, or by omitting to tax business activities employing less than eight individuals. *Quong Wing* v. *Kirkendell,* 223 U. S. 59; *Tax Commissioners* v. *Jackson,* 283 U. S. 527, 537, 539.

One would gather from reading the opinion of the court in this case that, on collection of the tax, Title IX at once appropriated it to the payment of unemployment benefits under the compensation laws of the States; that what it authorized was the taking of the property of the taxpayer—employer—and turning it over to his employees. But, there is not a word in Title IX providing for any such disposition. On the contrary, Title IX (sec. 905 (a)) explicitly provides for the collection of the tax by the Bureau of Internal Revenue and its payment as general revenue into the Treasury of the United States.

It is asserted that Title IX is not a revenue measure; that it does not provide revenue with which the United States may pay its debts and provide for the general welfare of the nation. But, as heretofore pointed out, the tax imposed by section 901 has all the indicia of a validly laid excise. It is to be collected by the Bureau of Internal Revenue the same as all internal revenue taxes are, and paid into the Treasury of the United States "as internal revenue collections"; and in section 905 (b) the taxpayer is required each year to make

a return under oath of his tax and file it with the collector. Title IX makes no provision for the expenditure of a penny of the tax. On its face, then, Title IX discloses that it is a revenue measure, and we are informed that it will in fact bring into the Treasury the first year of its enforcement millions of dollars, and increasing millions each year thereafter. It cannot, therefore, be claimed that Title IX is a subterfuge and not a revenue producer.

In *Nigro* v. *United States,* 276 U. S. 332, 353, a like contention was made in regard to the Anti-Narcotic Act after its amendment in 1919, in the Revenue Act of 1918. That amendment had increased the tax imposed under section 1 of the original Act, so that the income from the tax became "substantial." It mounted "to about one million a year." In view of this, the court said:

> If there was doubt as to the character of this Act—that it is not, as alleged, a subterfuge—it has been removed by the change whereby what was a nominal tax before was made a substantial one. It is certainly a taxing act now as we held in the *Alston* case. (274 U. S. 289.)

The contention that Title IX is not a revenue measure is without foundation. It clearly is such, and will produce millions of dollars for the Treasury. "Taxation may run *pari passu* with expenditures." (164 U. S. 620.) The expenditures of the government for a number of years now have exceeded its revenues, and it is common knowledge that its budget for a like period has been and still is unbalanced. It cannot be said that the government was without need of revenue when Title IX was enacted.

The activity selected as the subject of the tax being lawful, the tax being clearly an excise, and a revenue measure, as disclosed on the face of the Act (Title IX) imposing it, and being such in fact and not a subterfuge—it cannot be declared unconstitutional even though it may indirectly affect a reserved power of a State.

The *Child Labor Tax Case,* 259 U. S. 20, is without application to the facts in this case. The provision of the Act there considered was section 1200 of Title XII of the Act of Congress entitled "Tax on Employment of Child Labor", 40 Stat. 1138, and reads as follows:

> SEC. 1200. That every person (other than a bona fide boys' or girls' cannery club, recognized by the Agricultural Department of a State and of the United States) operating (a) any mine or quarry situated in the United States in which children under the age of sixteen years *have been employed or permitted to work* during any *portion* of the taxable year; or (b) any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States in which children under the age of fourteen years *have been employed* or *permitted to work,* or children between the ages of fourteen and sixteen have been *employed or permitted to work* more than eight hours in any day or more than six days in any week, or after the hour of seven o'clock post meridian, or before the hour of six o'clock ante meridian, during any portion of the taxable year, *shall pay* for each taxable year, in addition to all other taxes imposed by law, an *excise tax* equivalent to *ten per centum* of the *entire net profits* received or accrued for such year from the sale or disposition of the product

> of such mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment.

Under this statute, the subjects of the tax are (1) persons operating a mine or quarry employing therein children under sixteen years of age; (2) persons operating a mill, cannery, workshop, factory, or manufacturing establishment employing children under fourteen years of age; and (3) persons operating the latter activities employing children between fourteen and sixteen years of age more than eight hours a day or six days in the week, or after seven o'clock at night or before six o'clock in the morning, any portion of a year.

And the objects of the tax were the acts of employing children in the different activities in violation of the regulations there stated.

The measure of the tax was ten per centum of the entire net profits received or accrued for such year from the sale of products of any of the activities mentioned.

In that statute, the acts made the object or occasion of the tax were in themselves direct regulations of the employer's business, in a detailed and specified manner, pertaining to matters reserved exclusively to the States, not mere aids to the collection of the tax.

In construing the law to ascertain its meaning from the language of the Act, the court said (p. 36):

> Does this law impose a tax with *only that incidental restraint* and *regulation* which a tax must *inevitably involve?* Or does it *regulate* by the use of the so-called tax as *a penalty? If a tax,* it is *clearly an excise.* If it were an excise on a commodity or other

thing of value we might not be permitted under previous decisions of this court to infer *solely* from *its heavy burden* that the Act intends a *prohibition* instead of a *tax*. But this act is more. It provides a heavy exaction *for a departure* from a *detailed* and *specified course* of *conduct* in *business. That course of business is* that employers *shall employ* in mines and quarries, children of an age *greater than sixteen years;* in mills and factories, children of an age greater *than fourteen years,* and shall *prevent children* of less *than sixteen years* in mills and factories *from working more* than *eight hours a day* or *six days in the week.* If an employer *departs* from this prescribed *course of business,* he is to pay to the Government one-tenth *of his entire net income* in the business for a full year. The amount is not to be *proportioned* in any degree to the extent or frequency of the departures, but is to be paid by the employer in full measure whether he employs five hundred children for a year, or *employs only one for a day.* Moreover, if he *does not know* the child is within the named age limit, he is not to pay; that is to say, it is only where he knowingly departs from the prescribed course, that payment is to be exacted. Scienter is associated with penalties not with taxes. The employer's *factory* is to be *subject to inspection* at any time not only by the taxing officers of the Treasury, the Department normally charged with the collection of taxes, but also by the Secretary of Labor and his subordinates whose normal function is the advancement and protection of the welfare of the workers. In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed *to stop the employment of children*

> within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable * * *. Out of a proper respect for the acts of a coordinate branch of the Government, this court has gone far to sustain even taxing acts as such, even though there has been ground *for suspecting* from the weight of the tax it was intended to destroy its subject. But, in the act before us, the presumption of validity cannot prevail, because the proof of the contrary is found *on the very face of its provisions.* * * * Taxes are occasionally imposed in the discretion of the legislature on *proper subjects* with the *primary motive* of *obtaining revenue* from them and with the *incidental motive* of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty with the characteristics of regulation and punishment. Such is the case in the *law* before us. [Italics supplied.]

Throughout the opinion in the above case, the court was particular to keep in mind the difference between a statute imposing an excise tax upon a subject properly taxable, and having merely an incidental tendency to regulate or suppress a matter within State control, and one which on its face disclosed that its direct and sole purpose was to regulate a matter of State concern, and to penalize any departure from the regulations. But the language of Title IX is not on its face reasonably capable of a construction that its sole and direct purpose was to regulate a matter of State concern

and to penalize any departure therefrom, and not to provide revenue for the Treasury of the United States.

The *Child Labor Tax Case* and kindred cases are a far cry from the one now before us. The tax here in question is certainly an excise; the tax provisions of Title IX disclose on their face that the tax is levied to provide general revenue to defray the expenses of government; that the tax is collected and paid into the Treasury of the United States as general revenue, with all the attendant circumstances commonly provided for the collection of any tax; that not a penny of it is set apart for any particular purpose, either before or after it reaches the Treasury; and that in fact it will produce millions of dollars of revenue, and therefore is a revenue tax.

The opinion of the court in this case, in substance and effect, takes the position that, if the tax is an excise, if it is a revenue producing measure, and if its proceeds are paid as general revenue into the Treasury of the United States, without being appropriated to any specific purpose, either before or after it reaches there, and although these things are so, the court may inquire into the purpose and motive of Congress in laying the tax, and if it can discover that the tax tends indirectly to regulate the taxpayer's business, it may declare the tax provisions unconstitutional, even though Title IX is on its face and in fact a tax revenue producing measure. This, according to the decisions of the Supreme Court herein referred to, it cannot do. This was conceded in the *Child Labor Tax Case*, and was so held in the opinions of the Supreme

Court in the *Craig* and *Knowlton Cases, supra,* by Mr. Justice White. See also *A. Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44, 45. A like holding was recently had in a unanimous decision of the Supreme Court in the case of *Sonzinsky* v. *United States,* — U. S. —, decided March 29, 1937, where the court had under consideration the National Fire Arms Act of 1934 (48 Stat. 1236), requiring dealers to register with the Collector of Internal Revenue and pay a special tax of $200 a year. Sonzinsky was convicted of dealing in fire arms without having paid the tax, and contended that the Act "merely pretends to be a revenue measure and is, in reality, a police measure." In that case, it was said:

> Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed. But a tax is not any the less a tax because it has a regulatory effect.

In other words, it was a valid tax even though it tended indirectly to regulate the taxpayer's business.

The opinion of this court also takes the position that section 901 of Title IX coerces the States to enact unemployment compensation laws; that the coercion is brought about in this fashion: "A State not complying [that is, not enacting such a law] must bear whatever burdens result to it from unemployment in its industries. A State may not comply at once, but if the Act is held valid, the disadvantages resulting to the State and its employers and the consequent dissatisfaction of its

employees, it is quite obvious, will sooner or later compel all the States to enact such legislation."

In this statement, the court fails to recognize that a State must bear the financial burdens resulting to it from unemployment, irrespective of the tax imposed by Title IX upon employers. It also fails to recognize that the tax upon the employer does not impose the burden upon the State of caring for its unemployed. That burden rests upon the State, and always will, whether it enacts an unemployment compensation Act or not. There is no compulsion in this. It is free to enact such a law or not as it sees fit. Its employers and the employees may think that the State should enact such a law, but that is not compulsion that results directly or even indirectly from the tax imposed by section 901 of Title IX. The most that could possibly be said of it is that so far as the State is concerned, the result would be indirect and remote, but in such a case it does not lie with the courts to say that the Title imposing the tax was enacted solely to coerce the States to enact unemployment compensation laws. What was said in *Massachusetts* v. *Mellon*, 262 U. S., at page 482, is here applicable: The burden of taxation "falls upon their [the States] inhabitants, who are within the taxing power of Congress as well as that of the States where they reside"; that "the statute [does not] require the States to do or yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectually frustrated by the simple expedient of not yielding." The conduct of a State, in the instant case,

in enacting an unemployment law, or in refraining from so doing, being voluntary, its decision as to taking either course would seem to present a political question, not one for the courts. (Id. p. 483.) Furthermore, it appears that, in the case of Massachusetts, its unemployment law was enacted before Title IX became a law. In view of this, it can hardly be said that Massachusetts was coerced by Title IX to enact its law, and did not do so voluntarily.

It is also contended that section 902, the section of Title IX allowing the taxpayer a credit on his tax, likewise coerces the States to enact unemployment laws, but this contention stands no differently than the one just considered. It can enact such a law or not as it sees fit, and having enacted it, it can repeal it at will. The interest of a State, if any, in the allowance of the credit, is wholly remote.

It is further contended that the allowance of this credit coerces the taxpayer. Wherein it does so I fail to see. He surely is not compelled to take the credit. His freedom of choice is as undeniable as anything can be. He can take it or leave it. If he takes it he is relieved to a certain extent from paying taxes to two sovereignties on the same activity. It is now a common thing in Federal tax laws to allow a credit of a portion of a tax paid to a State upon the same activity, and even to a foreign nation. *United Shoe Machinery Corp.* v. *White,* decided by this court April 5, 1937.

It was undoubtedly discretionary with Congress to prescribe the qualifications of the credit it proposed to allow. But, as the parties in this case have stipulated that "the only way" the constitutional-

ity of Title IX "is raised is in respect to payments under that Title" of taxes by the defendant into the Treasury of the United States, we are not now concerned with the question of the construction and validity of section 902 allowing the credit.

Title IX is an act of Congress complete in itself. It does not even refer to any other Title. Its construction and validity depend upon what is stated within its four corners, not upon any other Title. See section 1103.

The tax should be sustained.

APPENDIX D

THE OLD AGE RESERVE ACCOUNT

Although we believe that the epitome of Title II, which is given in the main brief, pp. 5 to 14, covers every point that is of legal significance in this case, we here summarize for the possible convenience of the Court: (1) the method to be followed by the Secretary of the Treasury in investing the funds of the account while awaiting presentation of Old Age Benefit claims, and (2) the economic considerations which led Congress to establish a reserve account for future disbursements under Title II instead of relying on a pay-as-you-go policy.

The statute makes clear what is the method to be followed in investing the funds of the account. Section 201 directs the Secretary of the Treasury to invest these funds either in special three percent obligations of the Government, or in the ordinary obligations of the Government if the latter can be acquired on a yield basis of not less than three percent. No matter which course is followed, the national debt will cease to be held *pro tanto* by the general public, and will thereafter be owed to the Account. This result will obviously follow where the Account acquires government obligations which already are on the open market. This result will also follow if the Treasury gets funds from the sale of special obligations to the Account. For such funds would be used either to retire short-term obligations of the Government or

to buy in and cancel ordinary government obligations outstanding in the hands of the public. Section 2 of the Act of March 3, 1881, c. 133, 21 Stat. 457, U. S. C., Title 31, Sec. 741.

These consequences were foreseen and intended by Congress. H. R. No. 615, 74th Cong., 1st Sess., pp. 6–7; Hearings before House Committee on Ways and Means, 74th Cong., 1st Sess., on H. R. 4120, p. 899; Hearings before Subcommittee of the House Committee on Appropriations, 75th Cong., 1st Sess., on Treasury Department Appropriation Bill for 1938, pp. 38–39. In other words, over a span of years, an indeterminate [2] part of the public debt will be so transferred that it will be held by the Old Age Reserve Account instead of by the general public.

The method of investing the funds in the account being clear, we now turn to the reason why any fund at all is necessary. Stated succinctly, the reason is that expenses under Title II will constantly increase. As Arthur J. Altmeyer, Chairman of the Social Security Board, stated in the Hearings before the Committee on Finance, Senate, 75th Cong., 1st Sess., on S. Con. Res. 4 (February 22, 1937, p. 3):

> This is because the number drawing pensions starts at zero and increases indefinitely, both because of a steady gain in the proportion

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[2] The size of the Reserve is not in any way determined by the Social Security Act. See main brief, pages 9–14. The size will be determined by future appropriation acts of Congress. Moreover, obviously, the nature and size of the Reserve have no relation to whether Congress continues to levy pay-roll taxes, as in Title VIII, or levies sales taxes or increases income and inheritance taxes.

> of the aged qualifying for benefits and because of the gain in the total number and proportion of the aged. Moreover, under an old-age retirement system providing pensions bearing some proportion to past earnings, the average pension payable to those retiring in successive years will increase each year for an indefinite period. Thus, under the present Federal old-age benefit plan it is thought that the total amount of monthly benefits payable each year will increase up to a figure of at least $3,000,000,000 in 1980.

As these expenditures approach this figure of $3,000,000,000, Congress, if it had made no provision in advance, might find itself in a budgetary dilemma. To raise $3,000,000,000 from pay roll taxes would require in 1980 and thereafter an onerous rate on employers and employees, probably a five percent rate on each. *Ibid.* To raise $3,000,000,000, or any substantial part thereof, from other taxes might be extremely difficult if the taxpayers were already supporting other regular governmental expenditures, including interest on the national debt. To solve this dilemma, it was determined to collect more in Title VIII pay roll taxes in the early years of this century than would be needed for current Title II benefits; and to invest certain sums (computed on actuarial principles) sufficient, when taken together with interest, to meet the difference between the disbursements likely to be incurred under Title II in 1980 and the collections likely to be made under Title VIII in 1980. Of course, in order to secure interest on the fund in the account, it is necessary to invest it in some medium or other. The particular medium now contemplated is bonds of the United States.

Section 201. At some future time another medium of investment may be chosen. But the present arrangement, as the three preceding paragraphs show, will work equally well and will have the effect not of increasing the burden of other taxes, but merely of transferring *pro tanto* the national debt so that it is held to a certain extent by the Account instead of by the general public.

Looking at the picture as a whole, we see that when the time of maximum demand for benefits comes, the Account will be prepared. It will be receiving such regular appropriations from Congress as Congress can afford in the light of all government revenues including the three percent pay roll tax on employers and employees. It will also be receiving interest on the government obligations it holds. And yet no one will be bearing an excessive burden. The pay roll taxes will not have gone above three percent. Other tax rates will not need to be raised to meet the drain of the benefits under Title II; for though total revenue collections will have to bear the cost of interest on the obligations in the reserve account, they will be relieved of the burden, *pro tanto,* of interest on that part of the national debt which otherwise would be in the hands of the public.

The above explanation of the economic basis of the reserve, we repeat, does not in our opinion bear on the legal issues in this case, but relates solely to the political and economic policy of Congress.

U. S. GOVERNMENT PRINTING OFFICE 1937